

STATE OF CALIFORNIA

SENATE SELECT COMMITTEE TO INVESTIGATE
PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

HEARING RE: REVIEW PEROT SYSTEMS' ROLE IN CALIFORNIA'S
ENERGY CRISIS

STATE CAPITOL

ROOM 4203

SACRAMENTO, CALIFORNIA

THURSDAY, JULY 11, 2002

9:36 A.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR JOSEPH DUNN, Chair
 SENATOR WILLIAM MORROW, Vice Chair
 SENATOR DEBRA BOWEN
 SENATOR WES CHESBRO
 SENATOR BETTY KARNETTE
 SENATOR BYRON SHER

MEMBERS ABSENT

SENATOR MARTHA ESCUTIA
 SENATOR MAURICE JOHANNESSEN
 SENATOR SHEILA KUEHL

STAFF PRESENT

RONDA PASCHAL, Committee Consultant
 ALEXANDRA MONTGOMERY, Committee Consultant
 JOY TRAYNOR, Acting Committee Assistant
 LARRY DRIVON, Special Counsel to Committee
 CHRIS SCHREIDER, Legislative Aide to SENATOR DUNN
 JOHN P. ROZSA, Consultant to SENATOR PEACE
 STEPHANIE RAMIREZ-RIDGEWAY, Deputy Legislative Counsel
 J. CHRISTOPHER DAWSON, Deputy Legislative Counsel
 DAVID DURAN, Consultant to SENATOR MORROW
 SCOTT CHAVEZ, Consultant to SENATOR MORROW
 WADE TEASDALE, Chief of Staff, SENATOR MORROW

ALSO PRESENT

SENATOR JOHN BURTON

SENATOR STEVE PEACE

ROSS PEROT, President and CEO
Perot Systems Corporation

GORDON A. GREENBERG, Counsel to MR. PEROT
McDermott, Will & Emery

JAMES L. SANDERS, Counsel to MR. PEROT and MR. SHIRMOHAMMADI
McDermott, Will & Emery

PAUL GRIBIK, Former Employee
Perot Systems Corporation

JOSEPH J. ARONICA, Counsel to MR. GRIBIK
Porter Wright Morris & Authur

BRYAN F. SCHILLING, Counsel to MR. GRIBIK
Porter Wright Morris & Arthur

DARIUSH SHIRMOHAMMADI, Former Employee
Perot Systems Corporation

GREGORY K. LAWRENCE, Counsel to MR. SHIRMOHAMMADI
McDermott, Will & Emery

TERRY WINTER, CEO
California Independent Systems Operator

WILLIAM HELLER, President & CEO
Edison Mission Energy

LEWIS HASHIMOTO, Vice President, Market Analysis
Edison Mission Energy

J. ERIC ISKEN, Senior Attorney
Southern California Edison

ERIC WOYCHIK, Principal
Strategy Integration, Inc.

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01 P-R-O-C-E-E-D-I-N-G-S

02 -- oo0oo--

03 CHAIRMAN DUNN: Good morning, everyone. It
04 appears we are promptly starting as on time as our committee has
05 ever started.

06 Before I go forward with some preliminary
07 administrative duties, I'd ask the Secretary to please call the
08 roll of the committee.

09 SECRETARY TRAYNOR: Dunn.

10 CHAIRMAN DUNN: Here.

11 SECRETARY TRAYNOR: Dunn here. Bowen.

12 SENATOR BOWEN: Here.

13 SECRETARY TRAYNOR: Bowen here. Chesbro.

14 SENATOR CHESBRO: Here.

15 SECRETARY TRAYNOR: Chesbro here. Escutia.

16 Johannessen. Karnette.

17 SENATOR KARNETTE: Here.

18 SECRETARY TRAYNOR: Karnette here. Kuehl.

19 Morrow.

20 SENATOR MORROW: Here.

21 SECRETARY TRAYNOR: Morrow here. Sher.

22 CHAIRMAN DUNN: We have a quorum established, so
23 we can proceed forward.

24 First of all, I'd like to extend a welcome to our
25 newest committee member, Senator Betty Karnette from the Los
26 Angeles area. Senator Karnette, welcome, and thank you for
27 assisting in our now year-and-a-half-old process. Senator
28 Karnette, greatly appreciated.

0002

01 Very quickly, some administrative things. For
02 those who have followed our committee for the past
03 year-and-a-half, we have set a hearing re: Compliance and
04 Contempt as to LADWP for next Tuesday. I believe it's at 2:00
05 o'clock in the afternoon this coming Tuesday. That, of course,
06 is to address several compliance issues with the production of
07 documents by LADWP as well as the transcript controversy, for
08 those who've followed it from a week or so.

09 We are going to be scheduling other hearings in
10 August. We'll keep everybody noticed of those.

11 For those of you who are new to our committee,
12 let me just share with you why this committee exists, and what
13 we can and can't do.

14 The committee was formed about a year-and-a-half
15 ago to investigate the energy crisis and the potential for
16 market manipulation. We are not a law enforcement body. We are
17 not trying to find fault, not trying to find illegal conduct.
18 We're simply trying to gain a full understanding of what
19 occurred in the California energy crisis so that this committee
20 can make recommendations to the full Legislature about how we
21 may be able to prevent it from occurring in the future.

22 I want to underscore that, because there are
23 oftentimes mistaken impressions about what our committee can and
24 can't do.

25 Today, the process, so everybody knows for your
26 own scheduling purposes, Mr. Perot, who is already seated at the
27 table, will be our first witness. Mr. Perot has, at our
28 request, an opening statement that he will give of certain

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01 length.

02 What we will do at that point in time is, I've
03 asked Mr. Drivon and Mr. Schreiber, who are sitting here to my
04 left at the table, to lay out some of the documents that the
05 committee has questions about. We may shorten that, depending

06 upon the presentation by our first witnesses. And through that
 07 process, we'll be able to discuss some of the documents that, at
 08 least from the committee's perspective, we have found some
 09 concern with, and perhaps some inconsistencies, and hopefully,
 10 they can resolved so that we can all gain a good understanding.

11 After that process is over, we will take a short
 12 break. We expect it to be around the noon time or so. I know
 13 from a lot of perspectives, they'd like it to be earlier, but
 14 targeting somewhere in that vicinity, we'll take a lunch break
 15 at that time. We'll come back after a short lunch break, at
 16 which time we will go to the other panels, including the former
 17 Perot Systems employees, the Edison representatives, the ISO
 18 representatives, et cetera.

19 My hope is to finish up by mid-afternoon. As
 20 most of you know who have followed the process, my estimate of
 21 when we finish has always been wrong. Hopefully, today will be
 22 be the first.

23 The one thing I do want to ask of committee
 24 members, I have made a commitment through Mr. Perot's legal
 25 counsel that he will give his opening statement in an
 26 uninterrupted fashion. Since we have time allotted for Q&A, we
 27 can get into questions at that point, but that way Mr. Perot can
 28 get through his questioning.

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01 Senator Sher has arrived, too. Welcome, Senator
 02 Sher.

03 Very quickly, how did we get here today? I think
 04 most of you are aware of it. This committee made a discovery in
 05 documents that were turned over to the committee by Reliant
 06 Energy. In those documents we found a 44-page presentation that
 07 appeared, at least to us at first blush, to be an attempt to
 08 market the flaws that were in the California energy market
 09 following deregulation after AB 1890.

10 It was following that discovery that Perot
 11 Systems produced thousands of documents to us in a rolling
 12 production, and most -- not all, but most -- of the documents we
 13 are covering today will be from those internal documents that
 14 were produced to the committee via legal counsel for Mr. Perot.
 15 We'll have you guys identify yourselves in just a minute, when
 16 Mr. Perot starts.

17 We also received production of documents from
 18 other entities as well: ISO, some of the market participants,
 19 et cetera. We may touch upon those as well.

20 We did ask Reliant to be here today through the
 21 presence of Mr. Stout, who most of you are aware, due to
 22 scheduling problems, Mr. Stout said he could not join us today.
 23 We hope to follow up with Mr. Stout.

24 We also asked Mr. Backus to come today, but due
 25 to financial constraints, he felt he could not be here today, so
 26 we will not see Mr. Backus. He lives, I believe, in Colorado,
 27 if I'm not mistaken. So, Mr. Backus could not be with us as
 28 well.

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01 We will touch upon some documents that we think
 02 existed that have not been found, and others that may not have
 03 been produced as of yet, but I want to make sure everybody
 04 understands, this is a continuing rolling production by Perot
 05 Systems, and they have produced, at several times, documents. I
 06 think we're even expecting some additional ones in the coming
 07 days and weeks, and perhaps longer.

08 The investigation will continue after today.
 09 Anyone who's here looking for a final conclusion will probably
 10 be mistaken. We're simply looking to gain a better
 11 understanding of what we are able to know right now.

12 Lastly, let me make a cautionary comment to the
13 legal counsel that are here. You probably are well aware, the
14 temptation is to treat this like a court proceeding, and you
15 will find that oftentimes the committee members get referred to
16 as "Your Honor." I'll let everybody make their own editorial
17 comment on that, but we're not. It's simply an investigative
18 hearing, so the need for objections and all that is really not
19 necessary.

20 We, of course, do not accept from legal counsel
21 testimony. If you find a need to say something, you can say it,
22 say it shortly, but let's keep the legal counsel as much as
23 possible out of the testimony today.

24 Why don't we, before we start with Mr. Perot, if
25 we'd have legal counsel identify themselves. What you need to
26 do is pull that mike, push the red button, and pull it right up
27 to you so everybody can hear.

28 MR. GREENBERG: Good morning, Mr. Chairman.

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01 Gordon Greenberg on behalf of Mr. Perot.

02 Good morning, committee members.

03 MR. SANDERS: Good morning. James Sanders on behalf of
04 Mr. Perot.

05 CHAIRMAN DUNN: Welcome legal counsel, good
06 morning.

07 I missed protocol. I'd like to open it up, if
08 any of the fellow committee members wish to make any opening
09 comments, they certainly are free to do that at this time.
10 Seeing none, which is usual, we tend to get right to business.

11 Stephanie, can you please swear our first
12 witness, Mr. Perot, in, please.

13 [Thereupon the witness,
14 ROSS PEROT, swore to tell
15 the truth, the whole truth,
16 and nothing but the truth.]

17 CHAIRMAN DUNN: Mr. Perot, welcome. It's my
18 understanding you do have a prepared opening statement. If
19 you'd please share it with the committee.

20 MR. PEROT: Yes, sir. It's my understanding you
21 have a copy of it.

22 CHAIRMAN DUNN: Yes, we do.

23 MR. PEROT: Everybody has a copy, great.

24 Good morning, Mr. Chairman and members of the
25 committee.

26 Mr. Chairman, 36 days ago, this committee
27 released a 44-page Perot document that discussed aspects of the
28 California energy markets. I called you immediately when I

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01 heard about your concerns and assured you that we would
02 investigate your concerns and follow the facts, regardless of
03 where they might lead.

04 I also agreed voluntarily to testify before this
05 committee, and agreed that Perot Systems would provide documents
06 and information relating to our involvement with the California
07 energy markets and any work we did for the California
08 Independent Systems Operator, which we will refer to as the ISO,
09 the California Power Exchange, which we will refer as PX -- and
10 if these abbreviated versions are confusing, just stop me, and
11 I'll make sure we're being communicative -- and any other market
12 participants.

13 Over the past five weeks, the Perot Systems team
14 has worked literally 24 hours a day, 7 days a week, to
15 voluntarily produce more than 27,000 pages of responsive
16 documents to this committee and the California Attorney
17 General. These pages were culled from over a million pages of

18 electronic and paper documents that our team reviewed.

19 Responsive documents include drafts and final
20 versions of documents, such as proposals, contracts,
21 correspondence, e-mails, as well as a few marketing
22 presentations our energy team made as part of an unsuccessful
23 effort to market simulation software services to energy
24 companies for the deregulated California energy markets.

25 I understand that our team accomplished in five
26 weeks what normally takes more than six months. Now, I'm not an
27 expert on this. All I know is what people tell me. But I am
28 very much impressed by the fact that they did work around the

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01 clock, they did work through the holidays, and they did produce
02 these documents as quickly as they can, and the search, the
03 voluntary search goes on. Anything we find, we'll get to you.

04 Throughout this process, Perot Systems committed
05 that our search for the truth would be transparent and thorough.
06 Perot Systems has made many of these responsive documents
07 available to the public on our website. The documents we did
08 not make public on our website contained personal information
09 about our employees, privileged information, or business
10 information belonging to our customers that we are obligated to
11 keep confidential.

12 I am proud of the accomplishments of our team and
13 the way they've responded to your request. Our team continues
14 to search for any additional responsive documents.

15 This is what we understand today, based on our
16 continuing review of this matter. First, based on all available
17 information, Perot Systems believes there is no basis to
18 conclude that it was in any way involved in the California
19 energy crisis, and that any suggestion to the contrary is
20 false.

21 We had nothing to do with the high prices of
22 energy in California. As you know from our submission and the
23 public statements of people who are or were at the ISO and the
24 PX, Dr. Gribik, one of our former associates, encouraged the ISO
25 and PX to correct market rules before and after the markets
26 opened, and that was not a part of his job. But he was an
27 expert on this, and he was continually going in, saying, "Here
28 is something that needs to be corrected."

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01 Second, although Perot Systems tried to market
02 simulation software services for the deregulated California
03 energy markets to energy companies seeking to compete
04 effectively, no one hired us to provide these services. Our
05 marketing effort was unsuccessful.

06 We did present a workshop for Reliant Energy on
07 June 26th, 1998, but that presentation, for which we were paid a
08 total of \$8,000 plus expenses, was generic and similar to
09 training provided directly by the ISO to market participants,
10 and no confidential information was provided.

11 Third, Perot Systems did not disclose any
12 confidential information about the operation of the California
13 energy market to anyone. As the experts will tell you, there
14 was nothing confidential about the California energy market
15 rules because all of the rules were developed in public, debated
16 in public, criticized in public, and ultimately adopted in
17 public. Everyone involved in the deregulation of the energy
18 industry knew about the issues and problems in the market rules.
19 In fact, there were articles, papers, and symposia about these
20 problems.

21 Finally, contrary to the allegations leveled at
22 Perot Systems that our unsuccessful marketing efforts somehow
23 amounted to a conflict of interest, we did not violate either

the letter or the spirit of the ISO contract. The ISO initially misunderstood the nature of the consulting services we were marketing. Once our team met with the ISO, the ISO acknowledged that it was permissible for Perot Systems to market to energy market participants.

Senators, I am confident that once you understand what we did, you, like the ISO, will conclude that the consulting services we unsuccessfully marketed did not constitute a conflict of interest.

Yesterday, Perot Systems delivered a copy of this 41-page detailed submission to each member of this committee.

Do you all have a copy of this?

CHAIRMAN DUNN: We do.

If I could interrupt, Mr. Perot, if you'd pull the mike right to you, we want to make sure that everyone hears.

MR. PEROT: Sorry. Keep coaching me, please.

But the point is, as Paul Harvey says, this is the story. And when you get back to these A, B, C and D segments, statements by experts about what all of these cryptic words mean -- you know, what is gaming? When you read the word gaming, the flare goes up. When you understand the gaming theory, and how it was developed, and the developer earned the Noble Prize, and when you understand that all commodities, all stock, anywhere there's a trading market, they use the gaming theory.

And for example, our government, U.S. government, used the gaming theory in auctioning the cellular phone circuits, as an example.

But all of this is laid out in detail, but in a way that laymen can clearly understand what all of these complex words mean.

Aside from describing events in details, it contains sworn statements from leading experts on deregulated

energy markets, including the California energy market. I urge you all to read the statements of Drs. Wright, Stoft, Cicchetti, and the statements are found on the tabs A, B, and C. And then there's a fourth tab now, a D tab, which is a statement from Mr. Backus, or Dr. Backus -- no, this is from -- a declaration from James Kritikson. So, there is a D here today.

These are also on the Internet at www.PerotSystems.com under the California Energy Inquiry link.

These gentlemen are all experts in the field. In fact, Drs. Wright and Cicchetti are two of the principle authors of the California State Auditor's Report on the Energy Crisis. So, these are people who've been very much involved in this activity.

We provided this report to each of you in advance of this hearing because we wanted you to be aware that the allegations, suspicions, and innuendo are unfounded. Perot Systems also wants the public to know that these allegations are unfounded. For that reason, as we have done throughout the past five weeks, we've made these documents available to the public on the Perot Systems website.

While I will not go into the same level of detail set forth in the report, I do want to highlight some of the key points and give you an overview of the services that Perot Systems provided to the ISO, the PX, and a few market participants. I want to also summarize the marketing efforts that have given rise to some of the allegations leveled at the company.

Before I begin this process, I want to emphasize

that I have no first-hand knowledge of these facts. You may not be aware that I was not an officer, director, or employee of Perot Systems from August 1994 through November 1997. I was not with the company when the California energy market rules were initially debated or when our work for the ISO began. I was also not with the company when some of the marketing presentations were made.

I returned to the company in November 1997 as CEO, and then became Chairman of the Board and CEO in February 1998.

To my knowledge, none of these marketing presentations ever made their way to my office or were reviewed with me. As a result, the information provided to you in my testimony is based upon my limited review of the submission and some of the same documents and materials that were provided to you.

I have not been able to review all 27,000 pages that were produced for you, and therefore, I will not be familiar with some of them. So, if you bring something up that I haven't seen, I will have to consult with people who know the answer, then I will give you the answer. So I will ask your indulgence when we get to those questions in the Question and Answer period if I'm unable to answer specific questions about documents I have not yet seen.

As I go through the summary, I intend to directly address the questions and accusations that have been directed at the company.

First, Perot Systems never disclosed any

confidential information of any of its customers, including the ISO. Perot Systems' work for the ISO primarily involved project management, systems integration, training and systems testing for certain ISO systems. Let me explain in plain English. Basically, our job was to make sure that the different computers and computer programs that operated the ISO were able to communicate with one another, and that all of the systems operated as expected.

Obviously, Perot Systems did not write the legislation that deregulated the California energy markets. We did not write the rules for operating the ISO. We did not write the rules on how the market would be regulated. We did not tell the energy companies that they could not have long-term contracts. We did not operate any generation plants or any transmission lines and had no control over the supply of electricity.

The heart of the matter here is that the market rules were public knowledge. This is the most important thing I can communicate. Everybody could have access to the market rules. I am told they were debated in public for years and were required to be public by rules and regulation.

I want to be very clear. Perot Systems never received and therefore never possessed confidential information about the ISO market rules. I am told that there was no such thing as confidential information regarding the market rules because the rules were always publicly disseminated and debated. The whole point about the market was that the protocols and the rules were public, and everyone had access to the rules.

As stated earlier, I urge you to read the sworn statements of Drs. Wright, Stoft, Cicchetti. These gentlemen are all experts in the field. Dr. Julius A. "Chip" Wright is an economist, former North Carolina State Commissioner, and three-term State Senator from North Carolina. He has written and testified extensively about electricity competition, and

07 served as a member of the Southern States Energy Board Task
08 Force on restructuring the electric utility industry.

09 Dr. Charles Cicchetti holds the endowed Jeffrey
10 Miller chair in Government, Business and the Economy at the
11 University of Southern California. He's a past Chairman of the
12 Wisconsin Public Service Commission. He has founded three
13 economic consultancies and served for four years as Managing
14 Director and Co-Chair of one most renowned economic and
15 regulatory consultancies in the country. He also served at the
16 invitation of Governor Davis as a member of the Independent
17 Market Advisory Group, asked by the Governor to provide advice
18 on how to remedy California's energy crisis.

19 So, Dr. Cicchetti is a man who has a great deal
20 of hands-on experience about this whole process, and we asked
21 him just to review everything we'd done.

22 Dr. Steven Stoft is an economist whose work is
23 well known to this committee. Dr. Stoft was quoted by Chairman
24 Dunn in his testimony before Senator Holling's committee in
25 April 2002 on Enron's role in the California electricity crisis.

26 We hired these experts to help us assess the
27 information we'd gathered based on their specific expertise.
28 Their opinions support our conclusion that none of the

0015 information, and none of the examples contained in any of the
02 Perot Systems marketing materials was based on confidential
03 information.

04 Let me read to you some of what Dr. Stoft had to
05 say after reviewing the 44-page document that started this
06 inquiry. At Page 5 of his sworn statement, he says:

07 "Nothing in the 44-page document
08 appears to make use of any
09 inside, private, or confidential
10 information of the ISO, the PX,
11 or any other entity. Of
12 particular importance is the fact
13 that the 'holes' discussed in the
14 examples were corrected before the
15 California market opened. This
16 means the described strategies
17 taking advantage of these holes
18 and relying on them for their
19 effect could not have been used."

20 Now, as you get into this, you have all sorts of
21 cryptic words like "holes," and "gaming," and "Fat Boy," and on,
22 and on, and on. In these tabs, A, B, C, and D, they go in
23 detail, explaining what those things mean, and then
24 Dr. Cicchetti goes into great lengths to say it has sort of
25 become a form of art on people who develop new things around
26 gaming theory to come up with some exotic name to label it, and
27 goes into a great deal about how all of that has come about.

28 "This means the described

0016 strategies taking advantage of
01 these holes and relying on them
02 for their effect could not have
03 been used because they had been
04 corrected. There was never a
05 market that operated under these
06 rules, and so there was never an
07 opportunity to utilize these
08 strategies and the slides point
09 this out."

10 Dr. Cicchetti makes it clear that all of these
11 issues, and all the discussion of the market rules had been the

13 topic of much debate for several years among people charged with
14 formulating the rules. As Dr. Cicchetti says at Page 7 of his
15 sworn statement --

16 "There were significant debates
17 about mandatory and voluntary
18 participation, as well as the
19 types of bidding systems and
20 number of sequential markets
21 Many [market] observers predicted
22 that structural changes would be
23 necessary and inevitable. Some
24 analysts predicted that California's
25 compromise hybrid system would
26 require a complete overhaul to
27 fix future problems. Others
28 explained that 'single price'

0017 bidding would affect market
01 behaviors and would result in
02 strategic behavior or gaming.
03 The most thoughtful analysts
04 correctly explained that all
05 bidding schemes result in
06 gaming."
07

08 And I wish they would give it a less offensive word.

09 But the point is, this is like playing cards.
10 Any time you're trading, if it's horses, cattle, corn, cotton,
11 you name it, stocks, cellular phone frequencies, and now
12 electrical power, you have buyers and sellers who are engaged in
13 the trading process, and they all use advanced computer
14 technology to do that.

15 Just by way of example, I have here a book filled
16 with articles -- that's this book here, and you all have a copy
17 of it? You don't. Do they have a copy? We'll make one
18 available to you.

19 CHAIRMAN DUNN: Excuse me, Mr. Perot.
20 I'm assuming it's filled with newspaper
21 articles?

22 MR. PEROT: Yes, sir. And all these articles
23 predate the opening of the ISO of April 1st, 1998. While I
24 admit I have not read these articles, or the articles referenced
25 by Dr. Cicchetti, and have never attended any of the numerous
26 conferences and symposiums the experts refer to, one thing is
27 clear. In the two-plus years prior to April 1998, when the
28 energy market in California was deregulated, lots of people,

0018 just like Dr. Gribik, were engaged in a very open and public
01 debate about the rules governing the operation of the ISO.

02 And from my perspectives, this is a healthy
03 thing, because the challenge is to make the rules proper and to
04 close any openings in the rule. And Dr. Gribik made a huge
05 contribution to this state, and not part of his job or what he
06 was hired to do, but because of his experience, constantly going
07 and saying, "Here's something we should correct." And this is
08 before the markets opened.

09 CHAIRMAN DUNN: Once again, Mr. Perot, make sure
10 you're right into the mike so everybody in the room can hear.

11 MR. PEROT: Thank you. It's kind of hard to read
12 my document. I'll split my eyes for a minute.

13 CHAIRMAN DUNN: That was deliberate. I'm just
14 kidding.

15 [Laughter.]

16 MR. PEROT: I urge you to consider the most
17 important fact of all. Apart from a workshop California markets

provided to Reliant Energy on June 26th, 1998 -- this is a one-day workshop -- none of these companies that were ever solicited hired us to do work. No one at Perot Systems ever developed, let alone provided, any software programs for market participants that simulated the California energy market.

And with respect to the 115-page presentation provided to Reliant, the experts are clear. There is nothing confidential -- and I'm talking about the experts back here in my four tabs at the end, A, B, C, and D -- the experts, there is nothing confidential or proprietary discussed in that

presentation. Rather, all the examples discussed in the Reliant presentation related to market rules that had already been amended before the market was opened in April 1998. As Dr. Stoft and Dr. Cicchetti explain, this presentation was in the nature of a training manual explaining the California power market and how to operate within the rules. As Dr. Stoft says on Page 5 of his sworn statement,

"It does not present any strategies that could have been used to take advantage of market flaws or loopholes."

Senators, I want to address the allegations that the consulting services we unsuccessfully marketed were somehow intended to advise market participants on how to engage in illegal or unethical behavior. These allegations are inaccurate.

Let me start with the first claim that was made after the 44-page document was produced, the claim that one of the examples in this document was the so-called blueprint for improper trading strategies used by market participants. As you will see, this claim is also not true. To begin with, the plain language in the 44-page document makes it clear that the market trading rules being discussed in the document had been changed before the California energy trading market became operational. The document contains phrases about the specific protocols, would have or could have permitted strategies. More importantly, the document states in plain English, "the ISO has revised the protocols," and "the PX removed requirement for non-

negative prices."

And one of our team members, Dr. Gribik, played a significant role in helping get the protocols revised, or in the language of the technology here, the holes plugged.

Senator, one of the reasons the ISO and the PX revised the protocols referenced in the 44-page document before the market opened for energy trading was because of our associate, Dr. Gribik, who will be here today, alerted them to these problems. Even though it was not part of the Perot Systems contract with ISO, Dr. Gribik was concerned about certain market rules, and he took it upon himself to help improve the rules. We have provided you with the specific FERC, Federal Energy Regulation Commission, filings from March 1998 that show that these rules were amended before the trading markets opened. This is a very important point. As Dr. Stoft makes clear on Page 5 of his sworn statement,

"the 44-page document could not have been used as a blueprint for gaming the California market."

Now I would like to turn to another charge, it was somehow illegal or unethical to offer market simulation software services to energy companies for the deregulated California energy market. As I understand it, the charge is

25 that it was improper to offer these consulting services that
26 offered to advise market participants about methods they could
27 use to compete in the free market.

28 Senators, I am not an economist, and I admit that

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01 I am not an expert or even a novice on the concept of game
02 theory or gaming. I understand the word gaming has become quite
03 controversial. But even a cursory review of the articles
04 referred to in Dr. Cicchetti's sworn statement show the
05 widespread use of game theory in competitive markets. Game
06 theory is one of the ways that participants compete in a free
07 market. For example, as I've said before, it's been recently
08 used in the federal government's auction of cellular telephone
09 frequencies, so it must be a respectable technology.

10 I urge you to read the sworn statement of
11 Dr. Cicchetti, which appears in Tab A of Perot Systems'
12 submission. As he says on Pages 4 and 5.

13 "Game theory applies to auctions;
14 to bidding and economic behavior
15 when markets are uncertain,"

16 That's number 2.

17 "(3) when there are risks;
18 (4) when there are transaction
19 costs; and usually (5) when
20 time values are important.
21 Varied commodities such as corn,
22 pork bellies, oil, natural gas,
23 stocks, foreign exchange, and
24 now electricity are often traded
25 in commodities markets."

26 All trading on Wall Street is driven by very
27 complex, sophisticated computer systems. Take the time sometime
28 to get someone to brief you on that cutting-edge work that is

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01 now being done, but it's a constant.

02 "Traders are taught games and
03 trained to participate so they
04 can learn the discipline, tools,
05 and behavioral patterns in such
06 markets. This is also how athletes
07 train, military personnel prepare ..."

08 and here it says,

09 "and politicians plot how to
10 garner votes and win elections."

11 That's a direct quote.

12 "There is nothing sinister about
13 any of this."

14 CHAIRMAN DUNN: You're accusing us of gaming?

15 MR. PEROT: No. The point is, he's saying,
16 looking at your competition, seeing what they're doing, seeing
17 what the rules are. And the first big challenge here is, what
18 are rules? Then, as you're putting together rules on something
19 that's complex, it's impossible to have a perfect set of rules
20 on Day One.

21 But to have people like Dr. Gribik working with
22 you night and day, and everything that he ever talked about, or
23 any of these team members of ours ever talked about, were rules
24 that had been corrected, the deficient rules that were corrected
25 before the market opened. So, nobody can tell you -- but they
26 were just examples.

27 All of these people we were talking to have been
28 using the gaming theory forever, so it wasn't a new thing to

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01 them, even though it is to us.

To paraphrase Dr. Cicchetti, if there's something inherently wrong with discussing gaming theory, then several Nobel prizes need to be returned. I suspect that many of you saw the movie, A Beautiful Mind, about John Nash, who earned the Nobel Prize for his work in game theory.

This gives us a little history in game theory, anyhow.

Members of the committee, there's also been a suggestion that our unsuccessful efforts to market consulting services somehow constituted a conflict of interest. I'll discuss the events from October to November, 1997, in greater detail in a moment, but let me make one point clear. Perot Systems was not engaged any actual conflict of interest. The ISO reviewed the matter and discussed it with us in 1997, and made that determination.

And as the documents make clear, there were an array of consultants and contractors who were simultaneously providing an array of services to the ISO and to various market participants.

I do want to say that I regret that in October 1997, there was a misunderstanding with one of our clients, the ISO, that resulted from the ISO's mistaken belief that Perot Systems was marketing inside knowledge of the ISO's system to market participants. Based on this mistaken belief, the ISO alleged that Perot Systems' action created a material conflict of interest.

When this issue first surfaced, the Perot

Systems' team promptly met with the ISO's Chief Executive Officer and reviewed with him and the ISO's counsel what Perot Systems was doing, and showed them presentation materials. Perot Systems and the ISO handled this matter professionally and resolved that there was no actual conflict of interest. The only issue left open was to ensure that we took steps to avoid the appearance of a conflict of interest. I will discuss this further in a few moments.

These events were well-documented in correspondence between Perot Systems and the ISO, and these documents have been disclosed to the committee. But I want to emphasize what the letters make clear.

Once the ISO understood that Perot Systems was simply offering consulting services based on publicly available protocols, or in plain language, rules, there is no longer any issue concerning an actual conflict of interest.

Now let's turn to a summary of what Perot Systems provided, and to the events surrounding the unsuccessful marketing efforts that took place in 1997 and 1998. You can draw own conclusions about why no one was interested in our services, but in our business, if you offer a service and no one wants to buy it, the logical reason is that the customer does not see any added value to the service you're offering. And in this case, I think they all had advanced skills in these technologies.

I had joined Perot Systems more -- after a more than three-year absence, and I give you -- excuse me. Much of this occurred in November 1997 [sic], when I rejoined Perot

Systems after more than a three-year absence.

Let me give you a brief description of Perot Systems. It was founded in 1998 [sic]. In large part, Perot Systems provides information technology services across multiple industries. We allow companies to outsource their information technology function.

We are predominantly a computer services company.

Perot Systems is not, and has not ever been, an energy generator or marketer. We never traded in the California energy market or in any other energy market, and we have never generated electricity.

Beginning in May 1991, Perot Systems provided information technology services to East Midlands Electricity, an electric utility company in the United Kingdom. Although the scope of Perot Systems' work was reduced in September 1999, we continued to provide services to EME on a project-by-project basis.

From 1994 to the present, Perot Systems has provided a variety of consulting and information technology services to Southern California Edison on a project-by-project basis. Through Edison, Perot Systems also provided consulting services on congestion management to the Western Power Exchange, which was formed to develop a plan for deregulation.

In 1995, Dr. Paul Gribik joined Perot Systems. Dr. Gribik was hired to assist Perot Systems in its effort to provide consulting services to utilities and energy companies as they moved toward deregulation. While at Perot Systems, among other things, he provided consulting advice to WEPEX and some --

now, that's the Western Power Exchange, WEPEX -- and some market participants on congestion management. Dr. Gribik will explain his services to you in the next panel.

Between February '95 and February '97, Perot Systems provided general business and information technology consulting services to the Department of Water and Power of the City of Los Angeles. Perot Systems worked with LADWP -- that's the acronym -- personnel to design and, in some cases, implement strategies and plans in a number of areas. Near the end of its engagement, Perot Systems prepared LADWP's 1997 Strategic Business Plan, which included recommendations relating to energy generation, trading, and transmission. This plan has been included in the documents produced for the committee.

In late 1996, Perot Systems worked with ABB Power Systems, T&D Company, which we will refer to as ABB, and computer services unit of Ernst & Young, in responding to a request for a proposal to build the ISO's transmission scheduling and business computer systems. ABB and Perot Systems ultimately formed the ISO Alliance, LLC, and that entity was selected to build the transmission scheduling and business computer system. This contract was signed in March 1997.

ABB developed the software that translated the market rules into computer programs. Ernst & Young was the subcontractor under ABB that developed the financial software that would be used to run the financial and back office administrative functions of the ISO.

Perot Systems' role was primarily to do the overall project management and to provide systems integration

and testing. In plain language, we had to make sure the computers and software, including ABB's and Ernst & Young's software, worked with the other systems run by the ISO. We had to test the ABB's and other vendors' software to make sure that it operated as required by the ISO contract.

There is absolutely no evidence that this software code was ever misused.

Dr. Shirmohammadi is on the next panel, and he can describe the systems integration work more fully.

As I just described, Perot Systems provided services to Edison, LADWP, and the Western Power Exchange Steering Committee before we began work for the ISO. Some of these relationships were ongoing at the time we signed the ISO

14 contract. In other words, we were already providing services to
15 other market participants.

16 The ISO contract had explicit provisions dealing
17 with conflicts of interest and appearance of conflict of
18 interest. There's a prohibition against actual material
19 conflict of interest.

20 There's also a requirement to list items that the
21 time contract was signed -- that at the time the contract was
22 signed could give rise to the appearance of a conflict of
23 interest, but that provision did not prohibit Perot Systems from
24 continuing its existing relationships with market participants
25 or marketing to others. Perot Systems did, in fact, disclose at
26 the time ISO Alliance entered into the contract with the ISO
27 that certain personnel who were going to work on the ISO
28 contract had done work for other energy companies and for the

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01 WEPEX. Many companies and groups who were interested in
02 deregulation participated in the WEPEX meetings, including
03 utilities, energy generators, energy traders, consultants, and
04 public interest groups concerned about the shape of
05 deregulation.

06 The ISO could have required as part of this
07 contract that no party do any work for any of the market
08 participants, but they did not. I suspect there was no such
09 requirement because, as I mentioned earlier, virtually anyone
10 and everyone who was interested in deregulation was working for
11 more than one of the market participants.

12 Let me turn for a moment to the efforts by
13 Dr. Gribik to correct certain market rules. Dr. Gribik was
14 performing work under the ISO contract from approximately March
15 1997 through September 1997. He was responsible primarily for
16 designing the test that ensured that certain of the ABB programs
17 accurately reflected the ISO protocols. Although not part of
18 his job at the ISO, on a number of occasions, Dr. Gribik
19 identified problems, and brought these problems to the attention
20 of the ISO. We were working to try to make the system work as
21 well as possible.

22 The documents we produced to the committee
23 contain a number of memos reflecting instances where Dr. Gribik
24 identified problems and brought them to the attention of the
25 ISO. Many of these documents are governed by the
26 confidentiality provisions we had with the ISO, so we cannot
27 display them publicly here, but I urge the committee to review
28 these documents, and you have them, referred to in your

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01 submission -- the submission.

02 Now, I would emphasize that Dr. Gribik's efforts
03 to help the ISO change ineffective protocols were not a part of
04 his job. He was not employed by the ISO to draft, design, or
05 implement market rules. The committee needs to understand that
06 Dr. Gribik made these suggestions because he wanted to see the
07 market operate properly, and that fact flies in the face of any
08 claim that Perot Systems or Dr. Gribik was attempting to help
09 any market participants improperly manipulate the California
10 market.

11 Dr. Gribik's efforts have been recognized in
12 public statements by the people at ISO and PX. They all say
13 essentially the same thing: Paul Gribik was and is a man of
14 integrity, and he did his best to help solve these problems.

15 Now, let me turn to specific marketing efforts
16 Perot Systems undertook. Beginning in approximately March of
17 1997, Perot Systems and Dr. George Backus, who had a separate
18 company, began to market consulting services to Edison on
19 competing in a deregulated market. Dr. Backus was not a Perot

20 Systems employee. He has his own company, and the name is
21 Policy Assessment Corporation.

22 In May 1997, Dr. Backus apparently had a meeting
23 with Southern California Edison to market his consulting
24 services. We discovered internal e-mail traffic in May 1977
25 [sic], where Perot Systems -- excuse me, 1997. We discovered
26 internal e-mail traffic dated May 1997, where Perot Systems
27 personnel discussed the fact that Dr. Backus was interested in
28 knowing whether Perot Systems would assist him in developing a

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01 plan to present to Edison on gaming opportunities in the
02 deregulated markets.

03 As you will see from the e-mail traffic, a small
04 number of the Perot Systems' team debated the opportunity. You
05 will see that Dr. Gribik noted that Edison needed to be alert to
06 others trying to pick their pockets.

07 Similarly, Dr. Shirmohammadi made it clear that
08 if Perot Systems was to go forward with this project, it should
09 be construed as developing tools to prevent gaming against SCE,
10 rather than to allow SCE to game the market. Dr. Shirmohammadi
11 also stated the guidelines for any consulting project need to
12 make sure there is no conflict with the ISO project so far as
13 propriety is concerned.

14 He will be here today to present to you.

15 We produced a document for your committee that
16 appears to be a copy of a draft or final letter from Dr. Backus
17 to an individual at Edison. We do not know exactly what
18 happened with respect to this document.

19 What we do know is that ultimately, the marketing
20 effort led nowhere, and Perot Systems provided no services to
21 Edison regarding simulating the deregulated California market.

22 In July 1997, Dr. Backus' company also approached
23 Pacific Gas and Electric to see if he could interest the utility
24 in his consulting service. We provided a copy of the
25 presentation, dated August 18, 1997, prepared by Dr. Backus.
26 This document was not in our files; rather, it was a document
27 that Dr. Backus provided to us after this inquiry began in June
28 of 2002.

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01 The cover page of the presentation, entitled,
02 "Deregulation Dynamics Overview," suggests that it was presented
03 to PG&E on August 18th, 1997. Dr. Backus will have to tell you
04 whether this document was ever provided to PG&E. We believe
05 that Dr. Backus made a presentation to PG&E, and that Perot
06 Systems' employees may have attended.

07 While the Power Point presentation contains no
08 reference to Perot Systems, we also produced a document
09 entitled, "Project Tasks and Deliverables," dated August the
10 19th, 1997, which references Perot Systems. We believe that
11 Dr. Backus probably prepared this document with some input from
12 Perot Systems' personnel.

13 We also found a draft presentation that appeared
14 to have been created for presentation to PG&E. We have been
15 unable to determine if this document was ever presented or
16 provided to PG&E. We have not found any other documents, such
17 as cover letters or e-mails, that discuss this presentation.

18 What we do know is that ultimately, as with
19 Edison, the marketing efforts with PG&E went nowhere. No
20 contract, no business, no revenue.

21 In October 1997, Perot Systems made a
22 presentation to San Diego Gas and Electric. We believe that
23 Dr. Backus was originally slated to attend this presentation
24 with Perot Systems, but he may not have attended. The slides
25 that were prepared by Perot Systems for this presentation were

26 produced to the committee.

27 As with Edison and PG&E, this marketing
28 presentation went nowhere. We never provided any consulting

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01 services to SDG&E on the California market. There was no
02 contract, no business, no revenue.

03 While the SDG&E presentation did not generate any
04 business, it did give rise to the brief misunderstanding that we
05 had with our client, the ISO. One of the attendees at the
06 presentation apparently complained to the ISO about the
07 presentation. This gave rise to a conversation between ISO and
08 Ron Nash, one of our vice presidents, as well as the letter
09 dated October 22nd, 1997, from Jeff Tranen, who, as you know,
10 was President and CEO of ISO.

11 It was clear that the ISO had a mistaken belief
12 that Perot systems was marketing inside knowledge of the ISO's
13 systems to market participants. Based on this mistaken belief,
14 the ISO alleged that Perot's actions created a material conflict
15 of interest.

16 As we discussed earlier, Perot Systems had no
17 confidential information about the operation of the market
18 rules. Dr. Gribik summarized it best in an internal e-mail
19 dated November 17th, 1997.

20 MR. SANDERS: Mr. Chairman, at this point may we
21 put up the blow-up?

22 CHAIRMAN DUNN: You may.

23 We are hoping, for those in the audience, that
24 this will show up on the screen. If not, I know you're going to
25 read it, Mr. Perot, but just for background, because I know that
26 Mr. Drivon and Mr. Schreiber are going to discuss this one as
27 well, legal counsel, just identify the document.

28 MR. PEROT: This is a document, an internal

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01 e-mail from Dr. Gribik.

02 MR. GREENBERG: Dated November 17th, 1997.

03 MR. PEROT: "The rumors are that the ISO claims
04 that I know proprietary ISO
05 information. As to what this
06 information might be, I have no
07 clue. If they are making that
08 claim, I think we must squash it.

09 "I know their published
10 protocols and tariff. I also
11 have some minor experience in
12 testing one piece of their
13 software (their congestion
14 management software) to verify
15 that it works AS PUBLISHED.

16 That is the extent of my
17 knowledge of their computer
18 systems. In fact, I did not
19 run any of the tests personally
20 and [I have] never personally
21 used any of their software. I
22 only directed Michelle Dobard's
23 testing of the congestion
24 management system. I have no
25 knowledge of the inner workings
26 of any of the code, including
27 congestion management. I don't
28 know how to start their computer

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01 systems.

02 "How their markets work

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(and how their software models implement the markets) must be in the public domain. I fail to see how any knowledge of their models on this level could be considered proprietary. Their software should only implement their published protocols and tariff. If they think that their software deviates from their published protocols, this is something that they MUST CORRECT, [and] NOT HIDE. I believe that PSC must forcefully defend this position if we are to provide any service in the future to participants in California's ... energy market other than the ISO."

The parties addressed the conflict of interest issue in a professional manner five years ago and concluded that there was no conflict of interest.

CHAIRMAN DUNN: Let me interrupt, Mr. Perot.

Just for those who are following, we ended that quote now, so we're back to the regular text.

MR. PEROT: Going back to regular text.

So I'm saying, all these concerns were addressed in a professional manner five years ago and found no actual conflict of interest. Let's review the facts which remain the same today as they were in 1997.

In 1997, it appears that Gary Cotton, an executive at San Diego Gas and Electric, and a member of the ISO's governing board, participated in a Perot Systems' marketing presentation and then raised a conflict of interest with the ISO.

Mr. Tranen, the President of ISO, on October 22nd, 1997, wrote a letter saying that our marketing activities were a conflict of interest and had to stop. Perot Systems thought that Mr. Tranen, the President and CEO of the ISO, misunderstood the facts about the our marketing activities, and we wrote him a letter dated October 24th, 1997 that outlined our position.

The ISO conducted a thorough review of this matter through several channels. First, Mr. Tranen sent a letter to Mr. Cotton of the San Diego Gas and Electric Company on October 31st, 1997, forwarding our letter, Perot Systems' letter, dated October the 24th, and other materials, and asked Mr. Cotton for his review on Perot Systems' position. Mr. Tranen asked Mr. Cotton to call the ISO's outside lawyer, Marty Hoffman, to discuss his reaction.

Second, the ISO conducted a review of security from a systems perspective relating to the concerns highlighted by Mr. Tranen's October 22nd letter. A report of this review was provided to Terry Winter, then COO of the ISO, on November

the 8th, 1997.

Third, on November the 3rd, 1997, Mr. Tranen asked Ernst and Young for a security review of the application code provided to the ISO by Ernst and Young. On November the 14th, 1997, Ernst and Young delivered its review to Mr. Tranen.

Fourth, on November the 18th, Mr. Tranen, Mr. Hoffman, and two members of our team, Ron Nash, a vice president, and Chuck Bell, a Perot Systems attorney, met to

09 discuss the situation and to review Perot Systems' marketing
10 presentations.

11 After these thorough reviews and the face-to-face
12 meeting with Mr. Nash and Mr. Bell, Mr. Tranen, in his November
13 the 24th, 1997 letter, dropped the demands stated in his October
14 22nd letter stating that we cease our marketing activities, and
15 asked us to deliver a disclaimer to past and future prospects
16 for the service. Mr. Tranen also proposed certain elements that
17 the ISO wanted Perot Systems to adopt with respect to past and
18 future business, and requested a draft proposal to address the
19 possibility of an appearance of conflict.

20 On November 25th, 1997, an internal ISO
21 memorandum indicates that Paul Gribik, who was by then working
22 for Perot Systems on the PX account, had brought to the ISO's
23 attention a significant gaming scenario regarding the imbalance
24 of the energy market. This is a problem in the ISO rules. The
25 memorandum notes that the ISO agreed that the problem was
26 serious in nature and had potential significant reliability
27 implications. The memorandum flies in the face of any conflict
28 of interest allegation because it shows that Dr. Gribik was

0037 helping the ISO to make sure the rules were as perfect as they
01 could be, even though he was working for the PX.

02 On November 26th, 1997 Perot Systems provided
03 draft documents to Mr. Tranen and the ISO's counsel for the
04 ISO's review and approval. In this letter, Mr. Bell stated that
05 Perot Systems would implement the draft documents upon receiving
06 the ISO's approval. Mr. Bell also noted that it was Perot
07 Systems' understanding that the ISO would make similar requests
08 of each of the ISO's other vendors who offered consulting
09 services relating to the California market restructuring.

10 On February the 9th, 1998, Mr. Bell sent a
11 follow-up letter to Mr. Tranen and the ISO's lawyer regarding
12 the November the 26th, 1997 draft documents. In this letter,
13 Mr. Bell made it clear that Perot systems would use a disclaimer
14 in its sales and marketing presentations pending approval of the
15 documents set forth in the November 26th letter. Mr. Bell did
16 not receive any response to this letter.

17 In summary, this matter was thoroughly reviewed
18 five years ago by ISO's senior executives, including an internal
19 review, and consultation with its advisors, lawyers, and Gary
20 Cotton, who was a member ISO's governing board as well as being
21 the party who had raised the initial concern.

22 In short, the ISO agreed in '97 that there was no
23 actual conflict of interest. Perot Systems tried to satisfy the
24 ISO's request regarding the possible appearance of conflict of
25 interest by formally proposing certain procedures, but the ISO
26 had apparently lost interest in this matter and did not respond.

27 The result today is no different than it was five
28 years ago, with one additional fact: The marketing efforts were
0038 a failure.

01 So Senators, we went through all this trouble
02 about conflict of interest, and at the end of the day, we were
03 never -- never found a market for the services. And this is the
04 nature of business. People have a creative idea, and there
05 either is or is not a market for the services.

06 I'd like to turn to Enron now. In late 1997
07 early 1998, there was an attempt to market to Enron. Now, we're
08 back to the public rules. I understand that Dr. Backus' company
09 had been asked to make some type of presentation to Enron
10 clients, and let me explain the origins of this marketing
11 effort.

12 In January 1998, a meeting was scheduled in

Portland, Oregon to meet with Enron. The meeting was arranged by Dr. Backus. Perot Systems was also scheduled to attend. It was scheduled for January the 13th, 1998, but it never took place because weather prevented some of the people from arriving in Portland. We reported what appears to be a draft presentation by Dr. Backus in anticipation of the January 13th, 1998 meeting. We have no information to suggest it was ever delivered to Enron.

After the aborted January meeting, we believe there were additional sporadic efforts to market to Enron. We know that Dr. Backus' company made a presentation of some point -- of some sort without Perot Systems prior to February 6, 1998, for which he billed Enron \$1,000 and expenses.

We produced a letter we received from Dr. Backus' company after this inquiry began relating to this meeting between Dr. Backus and an Enron vice president.

Among the documents we received from Dr. Backus and produced to this committee are draft proposals to Enron, dated in mid-February 1998. We believe these draft proposals were authored by Dr. Backus, although Perot Systems' employees may have had some input.

But the reason we can't get to the bottom of this is, these employees are no longer with us. But believe me, everybody we can get our hands on -- and you all know this because I've done everything I can to help find all of these people that used to be around the account, and worked closely with you to make sure that they would be available to you. But that's still a hole right there.

We do not know if these proposals were ever placed into final form or sent to Enron. The same is true for a draft letter, dated April the 8th, 1998, to the same Enron vice president that Dr. Backus had previously met with in February. We do not know if the April 8th letter was ever placed in final form or whether any version was ever sent to Enron.

What we do know, Senators, is that we never provided any services to Enron as a result of these proposals. None of these conversations led to any business, and the discussion with Enron was terminated. As stated by Dr. Cicchetti on Page 29 of his sworn statement,

"Strategies employed by Enron and other market participants could not have had their

genesis in Perot Systems' presentations."

Now, I'm new at this, but having read what all these different experts say, I think the core problem in trying to market this is, this is something these people had been doing a long time, and they probably knew more about it than we did. And that was the whole core problem.

The only business that we can find where Perot Systems did business with Enron was in 1994, where we were paid \$3,060 for minor computer services. We never signed any contracts, and never provided Enron with any software services.

Now, let me turn to Reliant Energy. As you know, the committee first raised questions after Reliant produced a 44-page document. We do not know how the document made its way to Reliant. We believe it was never the basis of any presentation to Reliant. And as Dr. Stoft makes clear on Page 5 of his sworn statement,

"Nothing in the 44-page document appears to make use of any inside, private, or confidential

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information of the ISO, the PX,
or other entity, and the document
could not have been used as a
blueprint for gaming the
California market."

This is one of the first documents, after you and
I talked, that your staff was kind enough to send me. Then they
were very cooperative, and they took me through the document,

and I circled every single thing that was of concern. It was
all these exotic words that you didn't understand and I didn't
understand. And I can understand, reading it at first, since I
couldn't figure out exactly what they were trying to say, I
didn't know that the rules were public. I didn't know about the
gaming theory, et cetera, et cetera, et cetera.

But when the experts read this and know all about
all this, they say, now this is the way people trade.

There was an overview workshop presented to
Reliant on June 26, 1998, for which Perot Systems was paid
\$8,000 plus expenses. We received no business from Reliant as a
result of this seminar, and all the rules, of course, any rules
that were discussed were all publicly available to anybody.

And I am certain that these groups, these
companies, now I'm into this, have very, very sophisticated
trading teams, and this might have been a little boring to them.

A copy of the 115-page presentation that was
presented at that seminar was produced for this committee. The
experts have also reviewed this presentation and expressed the
clear opinion there is no confidential information in these
materials.

Senators, after the workshop was presented to
Reliant, we believe Perot Systems ended its unsuccessful efforts
to market energy companies market simulation software or
services for the deregulated energy markets. After that, we
decided this was not a good business to be in.

And the nature of our business, and I've been in
this business for over 40 years, people have creative ideas.

They come in discuss their creative ideas with the senior person
they report to, and you go out and test the market to see if
there's any interest. In this case there wasn't any.

I certainly respect your right to investigate
this matter, but I believe the facts are clear. Perot Systems
did not contribute to the California energy crisis. In the
words of Dr. Cicchetti, on Page 29 of his sworn statement,
"Allegations that Perot Systems
was in any way responsible for
this crisis are totally
unfounded."

I will now answer whatever questions I can. As
I've said early on, I hope you'll forgive me if I don't know the
answer to these questions, since I wasn't a part of the company
most of the time and have had no direct contact with it. But in
no way do we want to be evasive. If there's anybody anywhere in
the company that has an answer, and with all the documents we've
sent you, probably a lot of the answers are in the documents.
But whatever we can do to work with you and collaborate to get
you everything you want, we certainly continue to do.

Thank you, sir. Sorry it took so long, but I
just though I'd try to take you through everything I've learned
in a short period of time.

CHAIRMAN DUNN: Mr. Perot, thank you for your
testimony. The committee appreciates the fact that you were not
at the company at that time. There may be, as we suspect, many

27 unanswered questions today that need further investigation and
28 follow-up. We certainly understand that.

0043

01 As I said at the outset, our review of many of
02 the internal documents, at least on their surface, suggest
03 inconsistencies with the public statements that have been made,
04 and even, Mr. Perot, some of the statements that you just made
05 in your statement before committee today.

06 What we want to do at this point in time is look
07 some of those documents, try to resolve those inconsistencies,
08 and whatever follow-up investigation is necessary, clearly we'll
09 move forward in that respect. And hopefully, as it has been
10 thus far, on cooperative basis.

11 MR. PEROT: And it will be.

12 But let me just say one thing. See, the people
13 who know the keys to all this are the people in the next panel,
14 because they -- I don't think you can ask them a question they
15 can't answer.

16 I don't want you to think I'm trying to avoid
17 you, but if I don't know, I'll have to refer you to them. I
18 don't think it's appropriate for me to guess under oath.

19 CHAIRMAN DUNN: We're not asking you to guess,
20 Mr. Perot. And when you get to that point in time, I'm sure
21 you'll tell us, "I'm just going to guess," or "I don't want to
22 guess." We certainly respect that, and we'll be getting to
23 those follow-up witnesses as well, Mr. Perot.

24 As I stated earlier for everybody who's
25 listening, what we want to do at this point in time is turn to
26 Mr. Drivon and Mr. Schreiber.

27 MR. PEROT: May we take a very short break?

28 CHAIRMAN DUNN: You may indeed. We'll take five

0044

01 minutes for everybody, and then be back for Q&A.

02 [Thereupon a brief recess
03 was taken.]

04 CHAIRMAN DUNN: By the way during, Mr. Perot's
05 presentation, I heard a cell phone or two. Most of you know the
06 rules. Turn them off. We don't want to hear any more, and
07 we'll ask the Sergeant-at-Arms to escort you and your cell phone
08 out of the hearing room today. Please adjust accordingly. No
09 cell phones, and so forth.

10 MR. PEROT: Each time one rings, remember, they
11 used gaming theory when they auctioned the circuits. So, our
12 federal government did that. I think you probably should
13 investigate that.

14 [Laughter.]

15 CHAIRMAN DUNN: We'll create an artificial
16 shortage of those by having everybody turn them off.

17 Why don't we get back at it. I'm going to have
18 our Special Counsel, who has assisted from the beginning the
19 investigation, starting 16 months ago, as well as one of our
20 lead investigators, cover some of the documents.

21 Before we do that, I'm going to turn over to
22 Senator Byron Sher, who has a couple quick follow-up.

23 But before we do that, the rule's now changed.
24 There is no agreement not to interrupt Mr. Drivon and
25 Mr. Schreiber along the way.

26 So I will welcome Senators throughout the
27 process, if you have questions or clarifications, please feel
28 free to speak on those issues as we cover them

0045

01 I want to once again caution legal counsel, no,
02 this is not your turn to ask questions, et cetera. Not to steal
03 the phrase, but I guess under these circumstances, you guys are

the potted plants.

MR. GREENBERG: Mr. Chairman, I understand. Just for the record, we indicated we would like to question Mr. Drivon about his testimony today, and I understand the committee's position, and what our role is, as potted plants. So, we're still here in fertilizer. We're fine. We'll sit here.

CHAIRMAN DUNN: You've got it. Before we swear these two in, Senator Sher, you had some quick follow-up questions.

SENATOR SHER: One question, Mr. Chairman. Mr. Perot, welcome. Thank you for your comprehensive testimony.

I did have a question about your position on conflict of interest.

In your testimony, you several times, many times, emphasized that your marketing presentation activities of the company did not result in any business or generate any revenues.

So the question is, is it your position that if a party, a company, Perot Systems, is in a relationship with one entity, in this case ISO, that the activities of the company in soliciting business from another entity, these market participants, cannot constitute a conflict of interest if it doesn't result in business or generate revenues?

MR. PEROT: No, sir. The measure there is what does the ISO say, what does Cal PX say now that they have all of the evidence?

They both said that it is not a conflict of interest. That's my understanding, is what -- the real test is the customer, not whether the market wanted your services or not.

SENATOR SHER: So, there are other factors, even --

MR. PEROT: No, that is the factor.

SENATOR SHER: Is it possible, though, it is possible to have a conflict of interest in a situation, you say this didn't happen in this case, but it is possible even though the activities do not result in any business or profits? That's the point I'm trying to clarify.

MR. PEROT: If what we did was improper, even though it didn't result in business, then I would be deeply concerned.

But when the two companies who first expressed concern after looking at details concluded that there was not a conflict of interest, and I am told, recently have said this publicly again, then -- and all of the experts in the marketplace say this is not conflict of interest, those are the real litmus tests to me, not did you sell something, no.

SENATOR SHER: I understand that you said and strongly feel that there was no conflict of interest. But I think we know that we agree that it would be possible, simply by revealing information, even though there was no business

generated or revenues. There could be a conflict of interest there.

MR. PEROT: There could have been, and yet we didn't think there was, or we wouldn't have done it. And then when everybody looked at it after the fact and concluded that there was not a conflict of interest, that left my conscience clear.

Now, if I've missed something, I'd be glad to be educated on it.

10 SENATOR SHER: Well, I think we'll be getting --
 11 MR. PEROT: I would be concerned about that
 12 until, you know, the customers, ISO and Cal PX, and then all of
 13 the authorities that we have been able to talk to about this
 14 say, no, these are all public records; it's not a conflict.
 15 SENATOR SHER: Thank you.
 16 CHAIRMAN DUNN: Senator Sher, I'll underscore the
 17 fact, that is one of the areas we will be covering in the
 18 documents, because there is some questions we have about some of
 19 the documents in that regard.
 20 Stephanie, if you would do your duty.
 21 Mr. Drivon, Mr. Schreiber, we need to swear the
 22 two of you in.
 23 [Thereupon the witnesses,
 24 LAWRENCE DRIVON and CHRISTIAN
 25 SCHREIBER, swore to tell the
 26 truth, the whole truth, and
 27 nothing but the truth.]
 28 CHAIRMAN DUNN: Once again, for those who didn't
 0048
 01 hear me, I'll identify the two individuals. They are both with
 02 the committee. Mr. Drivon is our lead Special Counsel that's
 03 been on service with the committee since the get-go, a
 04 year-and-a-half ago.
 05 Mr. Schreiber is one of our lead investigators.
 06 Many folks, witnesses, have had many conversations with
 07 Mr. Schreiber along the way, I think, Mr. Perot, including
 08 yourself.
 09 We have asked them to present to the committee
 10 their findings with respect to a review of the documents that
 11 have been presented to the committee, produced to the committee
 12 regarding the Perot Systems' involvement in the setup of the
 13 market, and the subsequent issue of flaws relating to that
 14 market.
 15 Mr. Drivon, I'll turn it over to you. Will you
 16 please share with the committee your findings.
 17 MR. DRIVON: Thank you, Senator Dunn.
 18 The first thing that I would like to do is to
 19 acknowledge the invaluable and much appreciated help of the
 20 entire group of people who helped us put this together. Just as
 21 Mr. Perot indicated that his group had spent a lot of time
 22 providing us with information and trying to understand what
 23 happened, so have we spent a lot of time in the same endeavor.
 24 And many of the staff, including those that are here in the room
 25 and others who are not, spent a lot of overtime without much
 26 thanks from me until now.
 27 I would like to thank them all at this time in
 28 this public place.
 0049
 01 CHAIRMAN DUNN: On the behalf of the Chair and
 02 the entire committee, we extend the same gratitude to all of
 03 those that have been working on it.
 04 MR. DRIVON: The opening statement of Mr. Perot
 05 indicated that the proper thing to do in a situation where a
 06 company is engaged, as his was, is to try to close the holes, if
 07 the holes are found.
 08 And the first thing that I would like to do is
 09 ask for Exhibit Y, please, with the first paragraph blown up.
 10 This document, which will come on the screen in a moment --
 11 that's not Y.
 12 The first paragraph of that document blown up,
 13 please.
 14 CHAIRMAN DUNN: I want to make sure. Is this on
 15 the screen out here? It's not on the screen.

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MR. DRIVON: We can't do that, Mr. Chairman.
It'll have to be shown on this by the use of a camera on it.

CHAIRMAN DUNN: They've got it now, okay. Thank
you, TV folks.

MR. DRIVON: This is a 1997 document, part of a
letter from

SENATOR MORROW: Mr. Drivon, if I can interrupt,
is that document in our binder somewhere? Is there a way we can
correspond between exhibits?

MR. DRIVON: For most of them, the answer is
yes. On this one, I believe the answer is no, Senator. I'm
sorry.

Most of the time I will refer to a Bates stamp

number, which is in the bottom, usually in the bottom left-hand
corner. This has none. You can find it with that number.

SENATOR MORROW: If you could, if you have the
information, we've got them by tabs up here, all the way to Tab
31, that would be helpful.

MR. DRIVON: I'm going to have to apologize. I
don't think I have that cross-reference, but I think
Ms. Montgomery can probably help you with it.

This is a 1997 letter from Mr. Backus to PG&E,
"I previously cataloged something like 500
games it the UK two years ago."
I believe it should be "in".

"From our telephone discussion,
I am sure I have new ones to
learn. We have found over a
thousand loopholes in the
California system. For a few
years, playing at the edge of
the rules will be the name of
the game. I think of it as being
like multiple simultaneous games
of chess. You can't make the
same move over and over, and for
every move, there is a counter
move. One can also recognize
that the badly distorted rules
look like tax deductions. One
would feel very foolish for not

taking advantage of the easy
money."

CHAIRMAN DUNN: That was from Backus to whom?

MR. DRIVON: Backus to PG&E in 1997, at the time
that Backus and Perot Systems were collaborating with respect to
this potential marketing effort.

Going to a document, which is 558, please. And
if you could, first blow up the "From" and "To" in the top
corner for me.

This is from Mr. Backus to Mr. Suding at Perot
Systems, apparently at that point with LADWP, or assigned there,
I'm not sure. May the 1st of 1997.

If you could go down to bullet point two,
please.

"Paul's,"
that's Paul Gribik's,

"insights (and model) into how
the ISO works, where there are
holes in the ISO process, which
ones should be plugged, and
which should be used, etc."

22 If you'll go down to the fifth bullet point, I'm
 23 interested in the last sentence,
 24 "How ... Edison's"
 25 This is concerning the Edison proposal.
 26 "How ... Edison's maneuvers [can]
 27 be hidden or obscured."
 28 Then on the bottom of the page, there is a
 0052 paragraph right after the word "Alan." If you could blow that
 01 up.
 02
 03 SENATOR PEACE: Go back to that, because I think
 04 the first sentence is just as important as the next stuff.
 05 MR. DRIVON: Blow up bullet point five, please.
 06 SENATOR PEACE: It says,
 07 "Set up a data 'intelligence'
 08 process to determine when PG&E,
 09 Enron, Southern, or any other
 10 entities manipulating the market
 11 vs. just random market activity.
 12 How ... Edison's maneuvers [can]
 13 be hidden."
 14 So, these are maneuvers to be able to detect
 15 manipulation, and you don't want the manipulators to be able to
 16 detect the detection system.
 17 MR. DRIVON: That's -- that is one of the things
 18 that's being talked about here.
 19 There are thousands of documents involved, and
 20 this is a part of one of them.
 21 If we could have the paragraph I just asked for,
 22 please. This is from Paul Gribik in a comment to the five
 23 bullet points set forth above,
 24 "I think that items 2-5,"
 25 including discriminating between which holes should be plugged
 26 and which used,
 27 "... are very interesting areas.
 28 I have been talking to Dariush
 0053 and Ali about gaming
 01 opportunities that may exist in
 02 the protocols. I think that
 03 this could be a good area to
 04 find work, and George's ..."
 05 that would be George Backus,
 06 "abilities enhance ours quite
 07 well."
 08 If you could, put up Exhibit Q.
 09 Our investigation into this matter brought five
 10 questions to my mind that needed to be looked into.
 11 CHAIRMAN DUNN: Mr. Drivon, I just wanted to
 12 clarify.
 13 The purpose of the first few slides that you
 14 showed was?
 15 MR. DRIVON: I wanted to make the point.
 16 Mr. Perot made several references to how his team and people
 17 have worked actively with the ISO to plug the holes that they
 18 found. I wanted to make the point that thousands of holes,
 19 hundreds of holes, were found, and that there was a process,
 20 apparently whereby those holes were segregated into holes that
 21 they should plug and holes that they should use.
 22 The first question that we get into with respect
 23 to this is whether or not Perot Systems conspired to sell any
 24 inside information.
 25 Mr. Perot indicated in his statements that all of
 26 the information involved in this was public information, and
 27

28 nobody had any particular or special expertise with respect to
0054
01 this information that would give them a competitive advantage.
02 If you would put up number 538, please.
03 First highlight the address block in the top
04 lefthand corner. This is a letter, May 14th, 1997, to Mr.
05 Heller, Senior Vice President of Edison.
06 If you would, blow up the last sentence of the
07 first paragraph.
08 "The system directly ..."
09 MR. GREENBERG: Excuse me.
10 We produced that letter. It looks as though
11 there's no signature block on it. We were wondering if you had
12 a signed copy of that.
13 MR. DRIVON: I have only, sir, what you provided
14 me.
15 MR. GREENBERG: Is that a draft or is that --
16 MR. SCHREIBER: I can address that.
17 We believe this particular copy may be a draft.
18 I spoke with Mr. Heller, and my understanding after that
19 conversation is that he did receive a letter from Mr. Backus.
20 MR. GREENBERG: Does he have that letter so we
21 can get it?
22 MR. DRIVON: I don't know. Could you check with
23 him, Counsel?
24 CHAIRMAN DUNN: Mr. Heller will also be here
25 today.
26 MR. GREENBERG: Thank you.
27 MR. DRIVON: [Reading document]
28 "The system directly accommodates"
0055
01 this is talking about the proposed computer system.
02 "directly accommodates the noise,
03 uncertainty, and possibly hidden
04 patterns of behavior in the PX/ISO
05 operations as they relate to Edison
06 International operations."
07 The next paragraph, first two sentences. This
08 has to do, Senator, with the knowledge that was being marketed.
09 "To my knowledge, I have
10 assembled the only team capable
11 of providing you with a valid
12 system. Perot Systems
13 Consulting is more knowledgeable
14 than anyone about ISO/PX
15 protocols and operations as it
16 relates to your needs."
17 And we'll see in documents as they come up that
18 the Perot Systems and Backus people were talking about how they
19 had actually designed the protocols.
20 If we could have 447, please. This is a letter
21 from George Backus to Mr. Heller. The letter does not have a
22 date. It's a 1997 letter we believe.
23 If you would blow up the third paragraph.
24 "The project team would be
25 composed of three consultants
26 from PSC (Paul Gribik, Dariush
27 Shirmohammadi, and Ali Vojdani)
28 and two consultants from PAC
0056
01 (George Backus and Jeff Amlin)
02 plus one or more analytical/
03 technical programming staff
04 from each company. The analytical

Programming staff would not be provided with information on the implications ..."

et cetera.

"These consultants have great knowledge and experience in electric/gas-market gaming, the WEPEX protocols, and CPUC/FERC rules. To a large extent, this group represents one of a few, if not the only group, capable of the evaluation requested for this project."

MR. SCHREIBER: I think I should add right there that we had identified very early on in our investigation two particular employees at Perot Systems, Dr. Shirmohammadi and Dr. Gribik, and they were identified by both other Perot Systems' employees as well as other people involved in the energy markets as the most knowledgeable persons involved in all this. And the documents will demonstrate that.

MR. DRIVON: I have next document. I don't believe we have it on the screen, but this is a document from Mr. Backus to PG&E, Mr. Jacobs, July 21st of 1997. And the document starts off with an admonition to Mr. Jacobs that -- in

fact, I think that was it.

CHAIRMAN DUNN: It's Number 23 to the members.

MR. DRIVON: This document starts out with the admonition to Mr. Jacobs that the document can be destroyed.

That is the page I'm talking about. We want the second paragraph second and third paragraph.

"Our combined efforts with the Perot Systems' (PSC) staff working on the ISO (primarily those familiar to PG&E; Paul Gribik, Ali Vojdani and Dariush Shirmohammadi) have shown a large number of additional gaming opportunities that their unique experience with the PX, ISO, and the PX/ISO interface allow. These opportunities are not only in the design of the PX and the ISO itself, but also in the data transfer, settlement, and physical response issues."

CHAIRMAN DUNN: This letter was, in essence, a marketing to PG&E?

MR. DRIVON: PG&E.

"Thus, my associated organizations (PAC and SSI) along with PSC provide a capability that is not even

remotely available elsewhere."

SENATOR PEACE: Mr. Chairman, as long as we're in this document, can we go to the page just prior to that page we were just on?

CHAIRMAN DUNN: Yes.

SENATOR PEACE: Again, this is a document Mr. Backus is writing to PG&E. Third paragraph down.

"Gaming may be a dirty word to FERC and the California commission, but the sooner the

market clears out the distortions, the better it works for everyone. The 'gaming' defeats the flaws in the system and ultimately removes the players or features that lead to market distortions. There may be ethical issues related to 'the end justifying the means,' but there is a large region of opportunities between what is ethically viable (profitable) and ethically dangerous (illegal). It is prudent to understand the full spectrum of possibilities, and through the understanding of market dynamics that it provides, to select that

appropriate subset of strategies which best serve the long-term interests of PG&E."

CHAIRMAN DUNN: Mr. Drivon, I believe you were to address that later?

MR. DRIVON: Yes. Actually, we have a couple of permutations of that, because that was a part of one of the slides that was in the presentation as well, talking about, I think, the difference between genteel activity and illegal activity, and attempting to define the gray area between them.

SENATOR PEACE: But this paragraph, and you'll touch on it, also suggests a far more sinister motive. And it's at the root of a whole class of academicians whose belief system is rooted in a radical belief in purest capitalism. And that the only way to get true competition is to get all the rules out of the way. And actually proposes that companies engage in activities that will hasten the devolution of any kind of rules in the system, so we can all land in this Nirvana where there are no traffic cops.

MR. DRIVON: Which is the point, I think, the butcher was making in Henry the VIII when he said, "The first thing we'll do is, we'll kill all the lawyers."

CHAIRMAN DUNN: Senator Bowen.

SENATOR BOWEN: At some point, I think it would be useful for the committee to understand the view of Dr. Cicchetti in all of this.

I've had some dealings with him, and there is little doubt that he believes that the best market is a market

that's as free as possible.

And I think that some of the discussion we're seeing here is the debate we've been having all along, which is to what extent are you willing to suffer casualties in getting to that Nirvana. And we had a lot of casualties in San Diego in 2000.

The discussion ought to be not just about the market, but about what happens in the process of getting there.

MR. DRIVON: Senator Bowen, Dr. Cicchetti was involved not only as one of the authors of the State Senate Audit Committee, but also was a consultant to, I believe, Duke Energy in the deregulation process, and filed a declaration under penalty of perjury that the market participants and generators did not possess the capacity to exercise market power.

SENATOR BOWEN: Well, that pretty much proves my

point about Dr. Cicchetti's point of view.

And I would also say that that Auditor's Report, and we ought to go back to it at this point, gets the nomination for the worst performance by the State Auditor in the history of the State of California, because it was such a poor job of going through the flaws in the market.

And I didn't connect it with Dr. Cicchetti until this morning. But if you've got somebody whose point of view is that regulation just gets in the way, or rules of fair play just get in the way, you're going to have an Auditor's Report that doesn't expose the flaws in the market, because those are viewed as a means to the end of the pure market.

CHAIRMAN DUNN: I want to interrupt here for a second, Members. We're under time constraints, so I want to get through the documents, open up to Q&A so we can address perceived inconsistencies.

Mr. Drivon, if you'd please go forward.

MR. DRIVON: Dr. Cicchetti's conflict of interest was the subject of considerable discussion with the Auditor's Office early in this investigation.

If we could have 1079, please. First paragraph. CHAIRMAN DUNN: Again, identify the document.

MR. DRIVON: Same document, 7/21/97, from Dr. Backus to Mr. Jacobs of PG&E.

CHAIRMAN DUNN: In the marketing effort to PG&E.

MR. DRIVON: That's right. "The simulation of the way the actual PX/ISO operates is also incorporated into the model. Perot Systems Consulting (PSC) has help design these tools for the actual PX/ISO and are thus the most capable to make sure this project provides valid simulations of actual PX/ISO operations. Further, PSC's intimate knowledge of PX/ISO protocols has a particular advantage for this project."

If we can have Number 351, please.

CHAIRMAN DUNN: Identify the document.

MR. DRIVON: Yes. This is a document to Rich Davis from George Backus.

MR. SCHREIBER: Rich Davis is a senior vice president with Enron.

MR. GREENBERG: What is Dr. Backus' company's name again?

MR. SCHREIBER: Policy Assessment Corporation, PAC as it's often referenced to.

MR. DRIVON: There is a date that's crossed out. That date is incorrect. It was part of the retrieval process at Enron -- I'm sorry, at Perot.

If I could have the first six lines, please.

MR. GREENBERG: Did you say this is a Perot document?

MR. SCHREIBER: This is a Perot document. It was produced --

MR. DRIVON: It's a document that was produced by Perot, Counsel.

If you blow up the lower left-hand corner, including the Bates stamp, please.

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23 CHAIRMAN DUNN: You don't need to. We can see
24 it. It says: "PSC-PAC."
25 MR. GREENBERG: It's not a Perot document. It
26 was given to Perot.
27 SENATOR PEACE: Can I request that we engage the
28 potted plant rule?
0063
01 MR. GREENBERG: Fair enough. I apologize.
02 CHAIRMAN DUNN: Let's clarify it, and let's move
03 on here.
04 It was produced by Perot. No one is suggesting
05 it was created by Perot.
06 MR. DRIVON: That's right. It was created by
07 Perot's business partner.
08 CHAIRMAN DUNN: Mr. Backus.
09 MR. DRIVON: Right.
10 "There really is the PSC cost
11 problem of Paul Gribik having
12 such a high value right now.
13 He is the only person I know who
14 brilliantly understands both the
15 gaming issues and understands the
16 details of the ISO/PX. I have
17 searched years, close to world-
18 wide, to find people like him.
19 I can't even find anyone else
20 who understands the gaming
21 process."
22 If we could have document 450, please. Third
23 paragraph down, about halfway through that paragraph, a line
24 that starts "It is," and then four lines.
25 MR. SCHREIBER: We believe this document is a
26 George Backus document, but it's not identified as such.
27 MR. DRIVON: It is however produced to us as
28 Number 5 of the 27,000 documents. It's in the --
0064
01 MR. GREENBERG: Dr. Backus gave it to us in June.
02 MR. DRIVON: Good. Thank you for helping us with
03 that.
04 That's the correct paragraph, about halfway
05 through.
06 "It is unclear that this can be
07 done without Perot Systems help,
08 especially Paul Gribik's ..."
09 CHAIRMAN DUNN: Counsel, we're tracking for you.
10 MR. SCHREIBER: It's the paragraph below that.
11 It begins on the right-hand side, about halfway down.
12 MR. GREENBERG: Because I misspoke. I want to
13 make sure that I understand whether it was the prior document or
14 this document.
15 MR. DRIVON: [Reading document]
16 "It is unclear that this can be
17 done without Perot Systems help,
18 especially Paul Gribik's and
19 Dariush Shirmohammadi's expertise.
20 Both are very clever and their
21 minds are devious enough to
22 readily search for and find
23 gaming opportunities among the
24 myriad of individual (and
25 combined!) protocols."
26 And then, about half a dozen lines further down,
27 there is a sentence that starts,
28 "(As an important aside, When I

0065

01 read the CPUC and FERC documents,
02 many protocols appear open to
03 multiple interpretations. More
04 than once Paul has steered me
05 straight by noting how the 'law'
06 is actually written and used in
07 the PX/ISO software."

08 And "used in PX/ISO software."

09 SENATOR PEACE: Before you leave that page, same
10 paragraph, I think this is really a critical element because it
11 makes the point. Let me read it.

12 If you go to that paragraph, the last half of
13 that paragraph, starting with, "I would need to feel comfortable
14 with a staff member at EI." Now, if you go down, it starts,
15 "Given my experience," there. Start with that.

16 What's happening here is, Edison appears to be
17 pushing back and saying, well, we can use our people. Backus is
18 making his argument on why the utility people aren't up to
19 speed. They don't have the right culture.

20 "Given my experience to date
21 with utility employees, they all
22 seem too well seasoned and
23 trained on preserving system
24 integrity to let themselves
25 focus on ways to take advantage
26 of the rules."

27 So, it was necessary to get all of these utility-
28 type folk, who want to do things like keep lights on, and

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01 instinctively are predisposed not to be criminals, and get some
02 people in who are devious enough to get the job done.

03 CHAIRMAN DUNN: Mr. Drivon.

04 MR. DRIVON: If we could have 565, please, third
05 paragraph up from the bottom, "Paul is far ..."

06 SENATOR BOWEN: Mr. Drivon, what tab?

07 CHAIRMAN DUNN: Ms. Montgomery is looking.

08 MR. DRIVON: This is a document that was provided
09 to us by Perot in this investigation. The author is Backus, and
10 the subject is the SCE project, April 9th of 1967.

11 CHAIRMAN DUNN: What you're referring to is a
12 marketing effort to SCE/Edison.

13 MR. DRIVON: Correct, May of '97.

14 CHAIRMAN DUNN: We do not believe it's in the
15 notebook, members. I apologize.

16 MR. DRIVON: Within weeks of when the contract
17 with Perot Systems was first signed.

18 CHAIRMAN DUNN: Tab 18. My apologies.

19 MR. DRIVON: [Reading text]

20 "Paul is far superior to us in
21 the models of the ISO and PX,
22 and crucial to the California
23 work. But SCE will make sure
24 that we can only work for them
25 in California. PERIOD, PERIOD!!!!
26 This may bring some 'exclusivity
27 money' but we would want to
28 market elsewhere for better

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01 dollars. We can do 'elsewhere'
02 ourselves (Jeff and I) including
03 the ISO model, but having you
04 guys on board would certainly
05 increase what we could do

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06 (given our size) and take
07 advantage of Paul's expertise
08 and productivity (as compared
09 to ours)."

10 If we could have document 858, please.

11 MR. SCHREIBER: I think we can say George Backus
12 was the primary champion on the previous documents that we just
13 witnessed.

14 These are going to be now other people that feel
15 similarly.

16 MR. DRIVON: This is a November 8th, 1997 e-mail
17 from --

18 CHAIRMAN DUNN: Tab 21, members.

19 MR. DRIVON: -- from Jack Allen to Terry Winter
20 of the ISO. If we would have the last paragraph, please.

21 CHAIRMAN DUNN: While they're doing that,
22 Mr. Schreiber, who is Jack Allen?

23 MR. SCHREIBER: Jack Allen was a -- no longer
24 works for the California ISO, but he was a security systems
25 expert or chief; one of the systems guys for the ISO.

26 CHAIRMAN DUNN: And Terry Winter being the
27 current CEO, but at the time --

28 MR. SCHREIBER: Was the then COO, the Chief
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01 Operating Officer.

02 CHAIRMAN DUNN: Mr. Drivon.

03 MR. DRIVON: [Reading text]

04 "Significant issues, and perhaps
05 ethics, might arise from the
06 'outside' rather than from the
07 'inside'. For example, Paul
08 Gribik and Carl Imparato both
09 had intimate knowledge (and
10 actually helped champion)
11 protocols that are the basis of
12 the congestion management and
13 settlement process."

14 CHAIRMAN DUNN: Let me interrupt. Carl Imparato
15 is with?

16 MR. SCHREIBER: Carl Imparato at the time worked
17 for a company called Tabors Caramanis and Associates. Richard
18 Tabors is an energy consultant, and Tabors and Caramanis was in
19 the employ of Enron, as I understand it.

20 CHAIRMAN DUNN: Continue.

21 MR. DRIVON: [Reading text]

22 "It is reported that the former
23 works for Perot and the latter
24 works for Enron. Such
25 knowledge could be used to
26 leverage advantages and
27 influence policy changes that
28 might result in advantages for

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01 some interests. We do not see
02 these as 'internal threats to
03 security', but view them as
04 champions for special interests
05 to game the system, at the very
06 least through lobbying for
07 changes that might favor their
08 clients. The competitive
09 advantages of knowing the
10 algorithms and positioning to
11 game the market based upon such

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information, would appear to be the greatest 'threat.' There might be a competitive advantage of using knowledge of algorithms to advise clients on actions that could result in advantage."

CHAIRMAN DUNN: Next.

MR. DRIVON: And again, that's in November, Senator, of '97.

CHAIRMAN DUNN: Mr. Drivon, this all relates to your first question about whether there was inside information?

MR. DRIVON: Yes.

The next document is number 153. This is part of the proposal to Southern California Edison. It is a PAC or Backus document --

CHAIRMAN DUNN: Number 3, committee members.

MR. DRIVON: -- that was provided to us by Perot

as part of this.

If we could go down to the middle of the page, where it says "Dr. Paul Gribik."

"Dr. Paul Gribik (PSC): 20+ years of experience in utility operations and planning within California. He is key player in the development of the ISO protocols for California"

If we could go to the paragraph on Dr. Shirmohammadi,

"Dr. Dariush Shirmohammadi (PS): 20+ years of experience in electric utility planning and operations including extensive experience in electric restructuring and power flow issues. He is also fully cognizant of the California PX/ISO design and operation."

If we could have Number 10780, please.

SENATOR PEACE: Mr. Chairman, in that same document, before you leave it, 0145, Page 0145, last paragraph,

"This proposal brings together the talents of Perot Systems Consultants, Systematic Solutions, Inc., and Policy Assessment Corporation experts on

deregulation and PX/ISO operation. To our knowledge, no other individual or group of organizations is capable of providing the type of system proposed."

MR. DRIVON: The point of the document that I just read, Senator, is that Dr. Gribik is described here as a key player in the development of the protocols.

And I know from Mr. Perot's comments that they are disassociating themselves from the development of the protocols.

I'd like to have Number 10890, please.

CHAIRMAN DUNN: You've got about two left on this question, Mr. Drivon? Okay, all right.

MR. DRIVON: If we could go to the middle where it says, "We know the actual systems," this is part of an

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undated presentation labeled, "Perot Systems Capabilities."

"We know the actual systems.

We are part of ISO Alliance
building the ISO systems. We
know the 'warts' as well as
the theory."

If we could go to 10056. This is a proposal to
the California PX, August the 31st of 1999, by Perot Systems.
If I could have the first four lines of the last paragraph,
please.

"Perot Systems has been key

player in both the design and
implementation of California's
restructured energy market.
To start, we designed many of
the business protocols that form
the foundation of today's energy
market in California."

Senator, this was a presentation that was being
made in an attempt to get PX business.

Going to the next page, 10057, August 31st, 1999,
and if you could just blow the paragraph up, please.

"In fact, an examination of the
CalPX major accomplishments
enumerated by the CalPX CEO
clearly recognizes the magnitude
of Perot Systems' contribution
in realizing all such
accomplishments. For a majority
of these contributions we were
the main party responsible for
developing and deploying the
needed business protocols and
information systems."

CHAIRMAN DUNN: Mr. Drivon, could you just touch
upon the remaining documents.

I'm going to turn to Senator Sher in just a
minute, because I know he had some questions in this area.

Mr. Schreiber, quickly.

MR. SCHREIBER: Yeah, I was just going to say,
instead going through and calling up each page, I think the
point to be made here, the quotes that Perot uses to describe
itself is, we are the main party responsible; we designed and
developed; we designed and refined protocols.

The reason why this is critical is because in my
conversations with former Perot employees, as well as with
current Perot management or counsel, they have been very
specific in describing themselves as an overseer in the market.
And by that they, I think, mean to create a lay term for a
system integrator.

Yet it strikes me that their descriptions of
themselves indicate quite a different picture.

MR. DRIVON: To go on in that same document
without bringing it up, I got you, Senator, but I know you were
up until 2:00 in the morning on this.

Reading without bringing it up,

"Perot Systems played a key role
in the development and deployment
of the BFM (Block Forward Market)
to the CalPX. We completely
designed and developed the ISO
Data Bridge. We designed and

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24 developed the Zonal Price
25 Calculator before launch of the
26 CalPX. We designed and developed
27 the Bookout application for the
28 PX. We designed and developed
0074 the RTDC system to handle CalPX's
01 real time operational transactions
02 and to speed up and improve
03 accuracy to real time transaction
04 process."
05
06 It goes on, Senator, with a lot of detail as to
07 how deeply involved they were.
08 Moving to 874.
09 MR. SCHREIBER: As do, I should add, as do the
10 CVs of all the Perot team.
11 CHAIRMAN DUNN: I think we understand the point.
12 Is it just repeat of what we've seen, Mr. Drivon, in the final
13 handful of documents you've got?
14 MR. SCHREIBER: I think -- if you can call up
15 1113.
16 CHAIRMAN DUNN: What is this document?
17 MR. SCHREIBER: This document is actually an
18 attorney-client document provided to us when we asked the ISO to
19 waive the attorney-client privilege.
20 CHAIRMAN DUNN: Let me be specific about that.
21 The ISO waived the attorney-client privilege as
22 to all issues relating to Perot Systems. I don't want anybody
23 to have the misperception they made a blanket waiver to the
24 attorney-client privilege.
25 MR. SCHREIBER: Right, that's correct.
26 This was the analysis done by their outside
27 attorneys at Skadden, Arps. You can see their assessment in
28 the --
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01 SENATOR PEACE: Mr. Chairman, just as a matter of
02 clarification.
03 Is the outside counsel employed at this time in
04 this document different than the current outside counsel to the
05 ISO?
06 MR. DRIVON: I don't know, but the conflict was
07 waived by the client.
08 SENATOR PEACE: No, no, no. That's not my point.
09 MR. SCHREIBER: We don't know.
10 CHAIRMAN DUNN: I think I can answer that.
11 Actually, Mr. Schreiber is correct. Through most
12 of this investigation, the outside law firm for ISO that
13 surfaces most is Swidler, Finn. Skadden, Arps surfaces in the
14 early part of the ISO. I don't think we have any knowledge as
15 to whether that continued further, or even if it continues
16 today.
17 SENATOR PEACE: At some point ISO changed their
18 outside counsel.
19 CHAIRMAN DUNN: It may be true, or they have them
20 available as retained counsel.
21 SENATOR PEACE: Thank you.
22 CHAIRMAN DUNN: Let's go to the piece that you
23 want to identify here.
24 MR. SCHREIBER: I was just going to suggest that
25 right there, Donna, that's right.
26 This is referring to a presentation that Perot
27 made SDG&E which kind of kicked off the ISO involvement in the
28 issue. And ISO and its counsel believed, as it says here, the

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01 last point, which was part of the presentation, and says we
02 "Know the 'warts' as well as the theory," suggests that Perot is
03 selling inside information about flaws in the system, and may
04 have already given such information to their "partner", in
05 quotes, in the consulting venture.

06 CHAIRMAN DUNN: Keep going, if you would please.

07 MR. SCHREIBER: [Reading text]

08 "This is unacceptable under the
09 Contract, under any view of
10 business ethics, under Perot's
11 code of conduct, and -- if Perot
12 actually followed through with
13 the course of action intimated
14 in the slides -- probably would
15 be actionable in court. On this
16 ground alone, the ISO has a
17 serious complaint."

18 CHAIRMAN DUNN: Wrap it up so we can go to

19 Senator Sher.

20 MR. DRIVON: Later, Senator, we'll get into what
21 options ISO had, and why they didn't do anything about it.

22 CHAIRMAN DUNN: Any more? I understand you have
23 more documents there, I think everyone understands the point.

24 MR. DRIVON: Okay, one more, 528, sorry. Last

25 paragraph.

26 CHAIRMAN DUNN: I'm just trying to put a lid on

27 everybody.

28 MR. DRIVON: I understand.

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01 CHAIRMAN DUNN: It's Tab 14, members.

02 MR. DRIVON: The last paragraph, please. That's
03 it.

04 This is a Perot internal document, called an
05 Energy Deal Review Document, 5th of August of '97, discussing
06 what they were going to do with the PX.

07 CHAIRMAN DUNN: Before you go on, is this the
08 document that identifies four marketing opportunities for Perot
09 Systems: One, expansion of the PX work; expansion of the ISO
10 work; gaming opportunities; and ABB Alliance work?

11 MR. DRIVON: Right. In other words, get into it
12 in more detail, but I just want to read a little bit of it.

13 CHAIRMAN DUNN: All right, please.

14 MR. DRIVON: [Reading text]

15 "The immediate 'deal' opportunity
16 for the PX is to suggest that we
17 step in and: a. provide the
18 'thought' leadership in resolving
19 'loopholes' in the PX protocols
20 (NOTE: this paid involvement
21 also provides unique insight for
22 parlaying our 'Gaming' initiative
23 from our experience.)"

24 CHAIRMAN DUNN: The point, Mr. Drivon, is that
25 from the perspective of your view, the documents you reviewed
26 suggest what was being marketed was unique, inside knowledge
27 given Perot Systems' and Mr. Backus', of course, experience?

28 MR. DRIVON: They are marketing the idea that

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01 they had unique experience. And they were also talking about
02 the fact that they had designed and developed major parts of the
03 system, including the protocols.

04 CHAIRMAN DUNN: Senator Sher.

05 SENATOR SHER: Thank you, Mr. Chairman.

06 Mr. Perot, the question that I had and I shared

07 with the Chairman related to your testimony with respect to this
08 44-page document that was the marketing presentation to market
09 participants.

10 But the question also is underscored by these
11 documents that we've just seen which were marketing
12 presentations to others for the services of Perot Systems.

13 The question is, simply put, what was the point
14 of these market presentations in view of your testimony that
15 there really was nothing to market, because all of the flaws in
16 the system had been corrected before the marketing presentations
17 took place, that was the 44-page document; that that document
18 could not have been used as a blueprint for trading because it
19 referred to these holes or market flaws, which in your testimony
20 you said had already been corrected before the marketing
21 presentations took place?

22 So my question is, what were you marketing? What
23 was being marketed?

24 And I think same thing would apply to these other
25 documents, where apparently something was being marketed based
26 on expertise, or inside information, or what the Perot Systems
27 knew and had learned when they helped develop the systems for
28 ISO.

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01 That's why I'm puzzled. What was being marketed?
02 What was all this effort going to accomplish if your position is
03 that all of these holes and flaws had been taken care of before
04 the marketing took place?

05 MR. PEROT: Frankly, I had no involvement or
06 knowledge about any of this until it was raised as an issue, and
07 then I dropped everything to try get all of this information to
08 you.

09 In the process of that, one of my interesting
10 challenges -- and I worked with the staff and the Senator on
11 this -- we had all these people who are no longer with us that I
12 wanted to have participate, because they -- some of the people
13 that wrote these memos and what-have-you, interestingly enough,
14 they have been very cooperative. And they -- you'll have some
15 of these people here today.

16 The one person who's not here today is Dr.
17 Backus, who had agreed to come, but it's very important, I
18 think, that you -- these, there is no better source than the
19 people who wrote the documents.

20 I felt that it was not appropriate for me to pin
21 them down. I wanted you all to find here, and directly from
22 them, but the attorneys and what-have-you, as we were working
23 with them and getting them to agree to come.

24 Now, the interesting thing, most of these slides
25 that were presented, we have people sitting in the room who can
26 give you very direct answers, what was purpose of this thing?
27 Why were you writing this thing? So on and so forth.

28
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01 But I first learned about this when it became an
02 issue, and we spent all of our time trying to identify these
03 documents, trying to identify the people who were involved, and
04 trying to get all of these people to collaborate with you.

05 So, you know, I can guess what they were trying
06 to do. I can tell you what I heard they were trying to do.

07 They will tell you under oath what they were
08 trying to do. And I think that's probably your best source.

09 SENATOR SHER: I appreciate your answer, and I
10 know that, obviously you were --

11 MR. PEROT: If you want me to guess, I'll guess.
12 I think you'd rather have the facts.

CHAIRMAN DUNN: Can I answer, Senator Sher, if I

13 may?

14 SENATOR SHER: Sure.

15 CHAIRMAN DUNN: I think you can appreciate, I'm
16 sure you do, Mr. Perot, that from our perspective, at least my
17 perspective, we have a situation where that -- I know Mr. Gribik
18 maintains, as you stated in the chart, that he didn't have any
19 inside information and we have to squash this rumor quickly so
20 we can continue the marketing.

21 Yet, in virtually all of the market
22 presentations, in many of the letters either from Perot Systems
23 or Mr. Backus to market participants, the one thing they're
24 extolling is the inside intimate knowledge that Perot Systems
25 and Mr. Backus have with respect to ISO and the PX operation.

26 So, now we've look at it, trying to figure out
27 what's going on here, and it appears that you are inconsistent
28 to us.

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01 MR. PEROT: All I have ever heard is that all
02 these rules were public rules. I've had all this confirmed by
03 these experts here, back in the Appendices, A, B, C, D, so on
04 and so forth.

05 These documents, most of which I haven't seen --
06 CHAIRMAN DUNN: I understand.

07 MR. PEROT: -- but the whole point is, let's
08 assume that you weren't involved, but suddenly someone laid
09 these documents on my desk. I would react just the way you
10 have, and I would call everybody in and say that the one thing
11 I've learned over 40 years is not to put people on the
12 defensive. I'd call them in, and in a very positive way say,
13 "Would you mind explaining this to me?" And either they can or
14 they can't, right? But I like to get them to open up and just
15 really tell me what's going on.

16 Now, everything that I am hearing from the
17 people who've coordinated all this is that these people are more
18 than willing to tell you under oath exactly what they were
19 doing, and why they were doing it, and what their words meant.

20 And one of the things I think that you and even
21 I, 40 years in the technology business, have to get used to is,
22 these people use interesting words in expressing themselves in
23 the technology business. And I think it's Dr. Cicchetti said,
24 it was sort of another form of contest to come up with abstract
25 and unique words like Fat Boy, and gaming, and odd stuff that
26 everytime a layman sees it, you say, what's this, what's this.

27 But I think to get to the what's really -- what
28 did you mean, for example, you got the -- most of the people

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01 here today. I'm hopeful we can get Dr. Backus in.

02 Very important for all of you to understand, he
03 was not a part of our company. He was a person whom we
04 considered working with as a partner. And obviously, he was
05 very excited and very aggressive about this.

06 And interestingly enough, he first indicated he
07 was willing to come, and then at the last minute, indicated he
08 needed financial help to get here.

09 And I think, though, that if you talk to all of
10 the people, you can -- what you're after is the truth. And I'm
11 sure the best way to get it is to go right to the source.

12 CHAIRMAN DUNN: And we will be doing that, and
13 particularly, we're going to be discussing in just a few
14 minutes --

15 MR. PEROT: I'm not trying to be evasive. I'm
16 just saying, these are things -- I read the documents. I have a
17 lot of questions. It's not appropriate for me to ask them and
18 get the deck stacked, or anything like that. So, I want

everybody just to come in straight to your team and give you an answer.

CHAIRMAN DUNN: I understand. I'm not suggesting you're being evasive. We're going to discuss the gaming versus gaming theory in just a few minutes.

Senator Sher, did you have some follow up.

SENATOR SHER: No, that's fine.

CHAIRMAN DUNN: Kind of putting it in lay terms, as we always try to do, Mr. Perot, we're faced with, the committee at least, a conundrum here.

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MR. PEROT: Right.

CHAIRMAN DUNN: Either Perot Systems and Mr. Backus was marketing nothing, or they were marketing something of unique value.

I think, as you said, anybody looking at that from the outside, I don't quite think Perot Systems and Mr. Backus are going to try to market nothing. It would seem that they did have unique knowledge, and we have to more fully explore. I understand and I certainly accept that, Mr. Perot. And we hope we will get some insight from Mr. Gribik and Mr. Shirmohammadi in a little bit.

MR. PEROT: Oh, you'll get a lot from them. They've been very, very open, and I think you'll get a great deal of insight from them. So, they can come -- they can give you nuances here that I can't.

CHAIRMAN DUNN: Understood.

Senator Peace.

SENATOR PEACE: Thank you, Mr. Chairman.

Given the assumption that in the balance of the presentation associated with these documents, Mr. Perot's responses are likely to be similar, as they should be, deferring to the people who were actually involved in the process at the time, I do have a couple of questions that I think are appropriate for Mr. Perot to respond to.

The first is, in your investigation, looking back, and you were assured that all of this information was basically public information; correct? That the protocols and what-not were developed in public hearings, I believe was your

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testimony?

MR. GREENBERG: I'm only concerned, Senator, about attorney-client privilege in your investigation and what you're finding in your investigation.

SENATOR PEACE: I'm just referring to his testimony.

I believe your testimony was that you were assured that all of these protocols, and all of these methodologies were embraced in public processes at the ISO, at the PX, and therefore, all of the market participants should have been aware of the information.

MR. PEROT: Well, mainly I came to that conclusion from what these experts were saying in these exhibits here.

See, first, I didn't know. Now, one of the most difficult things for me when I see something that raises issues is not to over react. Because, my first reaction is, how could this happen, get angry.

But the point is, if I want to get to the truth, I've got to go to the source, keep it positive, and get them to tell me what really happened.

SENATOR PEACE: And your perception of the truth, based upon questioning these people, looking at documents, is that the information being discussed was information generally

25 known amongst industry participants?
 26 MR. PEROT: No, I can read you direct quotes from
 27 experts here --
 28 SENATOR PEACE: You don't need to do that. All
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 01 you need to do is answer the questions.
 02 MR. PEROT: Well, but I want you to know how I
 03 come to my conclusion, is that these --
 04 SENATOR PEACE: I just want to know what your
 05 conclusion was. Was that your conclusion?
 06 MR. PEROT: My conclusion is that based on all of
 07 the experts and other people that I've talked with, that the
 08 rules were public knowledge, and the challenge in the game
 09 theory trading, no matter what it is involved with, whether it's
 10 commodities or electricity, or what-have-you, is there is a
 11 constant move, back and forth, by both sides. It's a dynamic
 12 situation.
 13 You start by knowing what the rules are, and all
 14 of the rules were made public.
 15 SENATOR PEACE: Good. Now, given that
 16 information, and what you discovered in that process, what would
 17 your view, as a person who's been involved as a business person
 18 as well as in public life, as the likely knowledge of the
 19 regulators, the Federal Energy Regulatory Commission, about all
 20 of these rules, and the ways to get around them, and the various
 21 documents that have been published, the articles?
 22 I know I'm asking for speculation. I know it's
 23 not your notion.
 24 What would your reaction be if the Federal Energy
 25 Regulatory Commission claimed they had no knowledge that these
 26 sort of things existed?
 27 MR. PEROT: That the rules existed?
 28 SENATOR PEACE: The rules, the potential to game,
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 01 the theories, the various publications and documents, the very
 02 things you just said was public knowledge.
 03 MR. PEROT: I would be amazed if anybody that had
 04 been around marketing, and auctions, and trading, that sort of
 05 thing, wouldn't be well aware of it.
 06 SENATOR PEACE: And if you were to learn that
 07 FERC or other folks weren't well aware of it, what would your
 08 opinion of FERC's --
 09 MR. PEROT: I know they tell me you're
 10 speculating, but if I -- let's assume I had --
 11 CHAIRMAN DUNN: So much, Counsel, for your
 12 advice.
 13 [Laughter.]
 14 MR. PEROT: If I had known that, and I had known
 15 what was going on, I would have called FERC and said, do you
 16 guys understand how this whole thing works?
 17 SENATOR PEACE: And if you had been a Member of
 18 Congress, or the President of the United States, and someone at
 19 FERC had said, "We didn't know about this," or "We knew about
 20 it, and we decided we had to let it run its course?"
 21 MR. PEROT: Would you let me send a team in to
 22 explain it to you?
 23 If they said that. See, the interesting thing,
 24 even though I have to admit, I have never heard the gaming -- I
 25 missed all that. And I should know all that, because I've been
 26 in the computer business so long.
 27 When I first read it, my question was, what is
 28 this? What is these various things like Silver Peak, and things
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 01 like that?

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02 I later found out, as I got into this, that all
03 of that was public knowledge, like the Silver Peak thing.

04 SENATOR PEACE: And pretty hard to believe that
05 FERC didn't know about it.

06 MR. PEROT: It was not a secret we had. It was
07 public knowledge.

08 SENATOR PEACE: One last different line of
09 questioning.

10 You know, you mentioned earlier the telephone
11 experience. And it's kind of interesting in California, maybe
12 you can help me out.

13 We had a telephone company called Pacific
14 Telephone, and it got bought by a company called SPC. And then
15 we had -- we even had a computer company that actually
16 supposedly was the merger takeover entity called Hewlett Packard
17 with a company called Compaq.

18 If you talked to folks from California who were
19 associated with those companies, both of them, even in the
20 Compaq case, which is obviously pretty recent, the Hewlett
21 Packard folks' view is that the Compaq people are running the
22 company.

23 Similarly in the energy experience, the three key
24 players were Enron, Dynegy, and Reliant. And then along comes
25 this information with Perot Systems.

26 You all seem to have something in common:
27 ten-gallon hats and Texas.

28 Can you tell me why it is that you Texans seem to

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01 be so effective at --

02 MR. PEROT: Wait a minute. All the activity,
03 sir, all activity was being carried out by people -- I think if
04 you check their backgrounds, they came from this area.

05 [Laughter.]

06 MR. PEROT: The facts are, we -- see, I knew
07 nothing about this. I knew nothing about this until I got the
08 call. And then immediately I dropped everything and worked on
09 it night and day.

10 SENATOR PEACE: Let me just make clear my
11 question. I just want to know why you all keep winning.

12 MR. PEROT: It's a good joke, but it's not
13 accurate.

14 CHAIRMAN DUNN: I just want to caution everybody.
15 We've got Evelyn down here who needs to record everybody, so
16 let's not --

17 MR. PEROT: Bless her heart.

18 CHAIRMAN DUNN: -- speak on top of each other.
19 Senator Morrow.

20 Get ready, Mr. Drivon and Mr. Schreiber.

21 SENATOR MORROW: Thank you, Mr. Chairman.

22 Mr. Perot, at least by my way of thinking, it's
23 not so much about the rules and the public availability of the
24 protocols with the PX, or Cal ISO, and all of that.

25 I see the issue is about the information
26 technology system that Perot Systems actually installed and put
27 together for the CalPX.

28 The issue in my mind, and it's my question I pose

0089
01 to you, did Perot Systems have inside, unique information on the
02 mathematical algorithms, and computer software or hardware,
03 which technologically implemented the ISO and PX systems?

04 MR. PEROT: I have asked that question. I have
05 been told we did not.

06 And I've asked, well, if we had anything, was it
07 improper to share it? I've told we did not.

08 I think it is much better for your committee to
 09 ask all these people who were directly involved those questions.
 10 But those are the answers I've gotten.
 11 SENATOR MORROW: And rest assured, we will, to
 12 the extent that we have those witnesses.
 13 MR. PEROT: No, you've got to get the facts.
 14 SENATOR MORROW: I struggle with this, and this
 15 is why I asked you the question -- perhaps it's a leadership
 16 principle -- that in terms of leadership accountability flows
 17 downward, and truly, if there is some measure of accountability
 18 with employees of Perot Systems, that may be it, but
 19 responsibility flows upward.
 20 I see you as exercising your responsibility,
 21 trying to find out what's going on, and bringing information to
 22 the committee, and I appreciate that.
 23 But I struggle in terms of you coming up here and
 24 basically saying, I can't answer your questions because I don't
 25 have any knowledge of these things, at least personal knowledge.
 26 MR. PEROT: Unfortunately, that's the truth.
 27 Now, in my company we allow people to come up
 28 with creative ideas. We allow people at the middle management
 0090 level to allow someone to pilot test a creative idea.
 01 We teach our people from the day they join our
 02 company to not ever compromise their moral and ethical
 03 standards.
 04 Now, the good news is, rarely, rarely, rarely
 05 does anything like this come up.
 06 The point is, if someone has a creative idea and
 07 you try it, it either works or it doesn't. And the point is,
 08 you never would compromise the highest moral and ethical
 09 standards in pursuing an idea. That's not accepted in our
 10 company.
 11 SENATOR MORROW: Let me ask you, I'm curious
 12 about your personal opinion and thoughts on this. You've now
 13 had an opportunity to review much of the documents that Perot
 14 produced, and the excerpts that were highlighted. Now you that
 15 you have seen those documents, what is your impression?
 16 Particularly, it would appear that Perot has exhibited itself to
 17 various market participants as having inside capabilities,
 18 knowledge, and expertise. Was that mere puffing or what?
 19 MR. PEROT: The only way either you or I can get
 20 to the bottom of that question is to talk to the people who
 21 wrote those memos. For example, like Dr. Backus has a unique
 22 way of expressing himself. He does not work for me, but he was
 23 part of this group. And I think it's very important to say,
 24 what do you mean when you put that down.
 25 Interestingly enough, I've worked with
 26 technologists for many years, and they have their own language.
 27 And so, sometimes things that would cause me to react like this,
 0091 after a person explains it to me, and then I check it out, I
 01 say, okay, well now I understand.
 02 But I think what -- most of the flares tend to go
 03 up around the language used in some of these memos, and when I
 04 saw them, I certainly shared your reaction.
 05 But what I felt it was appropriate to do was to
 06 have your group talk to people directly, not have me spend a lot
 07 of time, or the company spend a lot of time trying to brief
 08 them, and that sort of thing. I would just have you find out
 09 what they were trying to say, and what they knew, and why they
 10 were doing what they were doing.
 11 CHAIRMAN DUNN: Okay, Mr. Schreiber, one quick
 12 point.
 13

14 Mr. Drivon, get ready.
 15 MR. SCHREIBER: I'd like to kind of bring it back
 16 to the presentation. Just a couple things.
 17 I've actually had the opportunity to speak to
 18 almost everyone involved. And whether or not they're sworn in,
 19 I expect their testimony today to be the same as when I spoke to
 20 them. But there are a couple of things I think we need to
 21 clarify, and couple assertions that you've made.
 22 Number one, at least from my perspective, I
 23 wasn't tricked, or fooled, or confused by game theory. I mean,
 24 I'm very clear on what it means, and how it's applied, et
 25 cetera.
 26 And I think we're crossing thresholds here
 27 between when game theory is referring to a mathematical model
 28 prior to the market opening, and when it's being used as a
 0092 manipulative term.
 01 The second thing is that Enron, in using these
 02 exotic names, I think as you referred to them, those exotic
 03 names weren't attached to theories. They were actually attached
 04 to practices that we've demonstrated took place.
 05 I think it's important that the Fat Boys and the
 06 Get Shortys, and Death Stars were actual. They weren't intended
 07 to confuse. They were, I think, quite the opposite. They were
 08 intended to simplify.
 09 MR. PEROT: No. In that group, that's their
 10 shorthand. They would be able to talk to one another.
 11 MR. SCHREIBER: But I just want to make clear,
 12 it's not theoretical, and I'm going to jump back to the
 13 presentation because I know we are a bit far afield.
 14 CHAIRMAN DUNN: Let me just underscore the point,
 15 Mr. Perot, that another area of concern is that gaming theory,
 16 John Nash, A Beautiful Mind, versus gaming strategies to
 17 manipulate the market, in our view there is a distinction
 18 between the two.
 19 And as we are going to get into here in just a
 20 second, you'll see that, from our perspective, some of the Perot
 21 Systems' presentations leave the area of gaming theory via the
 22 John Nash-type situation, and go into market manipulative
 23 strategies. That's the point I think Mr. Schreiber was making.
 24 Mr. Drivon, let's go. And as I've been
 25 cautioning everybody, do it quickly.
 26 MR. DRIVON: The next question that came to me in
 27 my mind was when did Perot Systems start to market this
 0093 information?
 01 I think it's clear that Perot Systems began its
 02 marketing process virtually contemporaneously with the signing
 03 of the contract with the ISO in March of 1997, although there
 04 was some indication that planning, and work, and discussion was
 05 had before that time.
 06 With respect to when this was done brings
 07 together the question of to whom and at what time. Without
 08 getting real detailed, there were presentations made to PG&E,
 09 SDG&E, Southern California Edison, Reliant, and probably a
 10 couple of other generators, but it is not absolutely clear, so I
 11 don't include them.
 12 I would like to look at one document, Number
 13 1075. This is a letter to John Jacobs, Manager of Market
 14 Evaluation for PG&E, July 21st, 1997. If I could have the first
 15 three lines.
 16 CHAIRMAN DUNN: For clarification, when did the
 17 market open?
 18 MR. DRIVON: March 1998.
 19

20 CHAIRMAN DUNN: So, this was before the market
 21 opened, but after the ISO contract was signed with Perot
 22 Systems.
 23 MR. DRIVON: That's correct.
 24 MR. SCHREIBER: I think John Jacobs -- and I know
 25 this is probably a minor quibble -- he technically didn't work
 26 for PG&E. He worked for their unregulated affiliate, which was
 27 NEG. I'm sure the utility folks would appreciate the
 28 distinction.

0094
 01 CHAIRMAN DUNN: Mr. Drivon.
 02 MR. DRIVON: [Reading text]
 03 "Dear John: I'm sending this to
 04 you via the fax because it may
 05 contain information that would
 06 require you to destroy it or to
 07 black out selected sections
 08 after you have read it. (I can
 09 edit it as you may request and
 10 then send an e-mail version.)"
 11 I think a little later, Senator, we'll have
 12 another document where concealment of the actual message was
 13 done through the sending of what is described as a real
 14 description of the presentation through an attorney to Mr.
 15 Heller in order to get the attorney-client protection,
 16 apparently.
 17 There was a proposal to Enron that was made in
 18 February of '98, within a month or so of the market opening.
 19 CHAIRMAN DUNN: Let me interrupt.
 20 Mr. Schreiber, was there any suggestion that
 21 there was contact between Perot Systems and Enron prior to that
 22 time?
 23 MR. SCHREIBER: Yes. Our understanding is that
 24 they actually met in the summer of 1997 as well.
 25 CHAIRMAN DUNN: Mr. Perot.
 26 MR. PEROT: One thing. Let's make sure that the
 27 record shows who wrote that letter. It's not Perot Systems.
 28 It's Backus.

0095
 01 I've worked night and day to get Backus here so
 02 you could talk to him. Unfortunately, it had a last minute
 03 glitch.
 04 I think it's really important that you talk to
 05 him.
 06 CHAIRMAN DUNN: Okay. Mr. Perot, I suspect my
 07 follow members are going to make the same comment, but I will
 08 defer to them in a moment.
 09 From our perspective, we understand that Mr.
 10 Backus was not an employee of Perot Systems. No one disputes
 11 that.
 12 MR. PEROT: I can't control him, what he's doing.
 13 CHAIRMAN DUNN: No one disputes that statement.
 14 Our concern, however, is he was, or his company
 15 and he was your business partner with respect to California, at
 16 least in some respects. That's what our --
 17 MR. PEROT: I'll make one comment.
 18 If any of this had started to materialize, it
 19 would have all had to come to legal. It would have all had to
 20 come to accounting, and all of it would have been put under a
 21 spotlight. And at that point, we'd have said, what is going on
 22 here? And then, it was either clean or not.
 23 None of it ever got up to that level.
 24 CHAIRMAN DUNN: Can I assume from that comment,
 25 Mr. Perot, that Perot Systems will waive the attorney-client

26 privilege and let us see all of those potential legal documents?
27 MR. PEROT: I'm trying to say again, everybody'll
28 get upset.

0096
01 I'm trying to help you get to the bottom of this.
02 CHAIRMAN DUNN: I understand, Mr. Perot. I
03 understand.

04 Senator Bowen.
05 SENATOR BOWEN: Thank you, Mr. Dunn.
06 Just to make it clear, you're here, Mr. Perot,
07 and we appreciate that, but our investigation really does go
08 beyond you. So, you'll excuse us if we look at other parties.

09 Although, the nice thing from our investigators'
10 perspective about Mr. Backus is that he's a prolific writer.
11 So, even without him here, we have a pretty clear idea of what
12 he was thinking.

13 Before we leave the document that Mr. Drivon just
14 had up, I'd like to go back to it and highlight something. It's
15 1076, and it's a sentence that's easy to miss because it goes to
16 the top of 1077. I'm not sure how we do that audiovisually.
17 It's the sentence that starts,

18 "We also show the advantage of
19 both the regulated and --"

20 CHAIRMAN DUNN: It's at the very bottom.

21 SENATOR BOWEN: Can you put up the top of the
22 next page, which is the continuation.

23 "We also show the advantage of
24 both the regulated and
25 unregulated segments of the
26 company having the tool so that
27 efforts are coordinated -- but
28 without direct communication."

0097
01 This is the kind of thing, as we at this
02 committee look at how these markets functioned or failed to, or
03 who was able to take advantage, this is very important.

04 SENATOR PEACE: Well, it's more than very
05 important. That would be a direct violation. It would be a
06 technological circumvention of the PUC rules and the FERC filed
07 tariffs.

08 SENATOR BOWEN: Exactly.
09 So, we get into these documents, and because
10 Mr. Backus was your business partner, then we have to ask what
11 part did Perot Systems' folks play in the suggestion that there
12 be communication, albeit indirectly, between the regulated
13 subsidiary and the unregulated subsidiary. This is extremely
14 relevant to the plan that PG&E proposes to get itself out of
15 bankruptcy.

16 CHAIRMAN DUNN: Mr. Drivon.
17 MR. DRIVON: I'll go quickly, or at least
18 hopefully so, a presentation was made on October the 7th of 1997
19 to Southern California -- excuse me, San Diego Gas and Electric.
20 This particular presentation was part of a marketing effort to
21 SDG&E by the partnership of Perot and Backus. And included in
22 that were --

23 MR. GREENBERG: If I may interrupt just for a
24 second.

25 We indicated to the Chairman that we were going
26 to have to leave at 12:00 clock today. There's a prior
27 commitment. We're approaching that time.

28 I don't want to interrupt the production of
0098
01 documents, if you would like to go through the documents, but we
02 do have to leave in the next five to ten minutes.

03 CHAIRMAN DUNN: That wasn't my understanding,
04 Counsel. I thought we had until about midday, 12:00 or
05 12:30-ish. That's why I've been snapping the whip at everybody
06 here.
07 MR. GREENBERG: That's my understanding, 12:00
08 o'clock.
09 CHAIRMAN DUNN: My understanding was, it wasn't a
10 hard 12:00; it was 12:00 to 12:30 that we were working on.
11 Mr. Perot, do you have until 12:30 or so to
12 stay?
13 MR. PEROT: I want to make sure that we do what's
14 right for you, whatever that takes.
15 CHAIRMAN DUNN: We're going to speed it up.
16 MR. PEROT: I'm probably in trouble with my
17 lawyers.
18 CHAIRMAN DUNN: I'm sure you are.
19 MR. PEROT: But the point is, I want to make sure
20 you're trying to get to the bottom of this.
21 CHAIRMAN DUNN: Correct.
22 MR. PEROT: Now, the good news is, you're going
23 to be talking to two people this afternoon who really know
24 first-hand what was going on. And based on my experience with
25 these two, these two people have great honesty and integrity,
26 and will be very direct with you.
27 CHAIRMAN DUNN: I understand, Mr. Perot. As
28 Senator Morrow --
0099 MR. PEROT: And they'll know at this level. See,
01 the problem is, you need to get down to where the people who do
02 it, involved, right in the thick of all this, can tell you what
03 was happening and what the words mean.
04 CHAIRMAN DUNN: Understood. But, Mr. Perot, as
05 Senator Morrow asked you, and I agree, we are also interested in
06 upper management's, current upper management's view of what went
07 on here.
08 MR. PEROT: Sure. I hope I've made myself clear,
09 but I'll stay. If you need a little more time, you know I'll
10 stay.
11 SENATOR PEACE: Since we're going to lose Mr.
12 Perot, in the interest of making sure he has the opportunity to
13 make himself clear, in your presented testimony it was very
14 clear that it was your position that all this information was
15 public, that at no time was Perot involved in anything that
16 would have been associated with dissemination or proposed
17 dissemination of information that rose to the level of a trade
18 secret or confidential in any way.
19 In your comments just a moment ago with respect
20 to Mr. Backus, do I interpret those to mean that you are not as
21 confident of Mr. Backus' conduct?
22 MR. PEROT: No, no.
23 SENATOR PEACE: Why are you so anxious to
24 disassociate yourself from Mr. Backus?
25 MR. PEROT: I'm not. I want to make sure that
26 you understand that he was a separate company. He's not part of
27 our company. And here is this individual out here that has this
0100 unique writing talent.
01 SENATOR PEACE: I gathered that you wanted us to
02 understand that.
03 I'm curious as to why you would be so anxious
04 that to have us understand that? In your review of the
05 documents, in your discussions, did some concerns raise with
06 respect to Mr. Backus?
07 MR. PEROT: No. I just wish he could be here,
08

09 because then he could explain.
10 SENATOR PEACE: What was the reason he wasn't
11 here, Mr. Chairman?
12 CHAIRMAN DUNN: Mr. Backus requested travel
13 expenses to come, I believe it was from Colorado. That's not
14 standard operating procedure for the Senate to provide him that
15 travel.
16 SENATOR PEACE: Is Mr. Gribik a Perot employee?
17 MR. PEROT: Former.
18 SENATOR PEACE: Former Perot employee. And the
19 other gentleman, is he a current or --
20 MR. PEROT: Former.
21 SENATOR PEACE: Both of them are former employees?
22 MR. PEROT: Yes.
23 SENATOR PEACE: And Perot Systems paid their way
24 here?
25 MR. PEROT: Yes.
26 SENATOR PEACE: Did you offer to pay Mr. Backus
27 his way here?
28 MR. PEROT: No, because he's in a different
0101 category. Now, the lawyers -- keep in mind.
02 SENATOR PEACE: I can understand what the
03 lawyers' advice would be to keep that distance, particularly if
04 I wanted to disassociate myself with Mr. Backus' prolific
05 writing.
06 MR. GREENBERG: It's a common -- I understand,
07 and I won't rise to that matter. It's just something that --
08 CHAIRMAN DUNN: But you're going to do it anyway.
09 MR. GREENBERG: It's just something that we have
10 to leave out there and say, we would respond normally.
11 CHAIRMAN DUNN: Mr. Drivon, if you'd finish on
12 this question quickly.
13 MR. DRIVON: I'm trying, Senator.
14 CHAIRMAN DUNN: In the words of Yoda, there will
15 be no trying. You either do or you do not.
16 MR. DRIVON: Then I probably have to confess
17 failure before I proceed.
18 In the presentations that were made to the market
19 participants by the Perot-Backus effort, it included suggestions
20 that they could help them understand how to double-book
21 transmission, generate capacity problems, overcontract for
22 distribution, engineer sudden outages of plants, put plant on
23 below margin cost to distort dispatch.
24 And as far as that is concerned, I would like to
25 refer to a document. I'll just read it rather than put it up.
26 It's Number 00353. This is a letter to Rich Davis, Vice
27 President of Enron, April the 8th of 1998, by someone named Ed
28 Smith, who I believe is a Perot Systems employee.
0102 MR. PEROT: Was, yes. He was at that time.
02 MR. DRIVON: And at that time, he said in the
03 first page of this letter,
04 "The 'good news' and the 'less
05 than good news' is that an
06 overabundance of strategy
07 categories exist; ranging from
08 just playing the 'gaps' in the
09 protocols, to taking advantage
10 of self-created congestion ..."
11 Moving down, in discussing broader strategies,
12 "... may actually serve to
13 create opportunities rather
14 than wait for them."

15 CHAIRMAN DUNN: This was to whom, SDG&E?
 16 MR. DRIVON: This was to Enron.
 17 And that document goes on to discuss the Silver
 18 Peak issue.
 19 MR. SCHREIBER: And worth noting, Enron actually
 20 did self-create congestion. And it's an important point here,
 21 because I think, Mr. Perot, you testified that Perot Systems --
 22 and I think your experts swore to this as well -- couldn't have
 23 been the genesis of several of these proposals, but in fact, I
 24 don't know how they could swear that that couldn't have been.
 25 Enron did self-create congestion, and that was a suggestion made
 26 by Perot Systems.
 27 MR. PEROT: I am told that the Silver Peak thing
 28 was discussed in seminars by, you know, the ISO and
 0103 what-have-you, and getting everybody up for it. That's before
 01 it started.
 02 MR. SCHREIBER: I guess the best way to put that
 03 is, the Silver Peak incident doesn't represent the sum total of
 04 all of the congestion.
 05 MR. PEROT: Oh, I thought that's the one you
 06 raised, excuse me.
 07 MR. SCHREIBER: More generic.
 08 CHAIRMAN DUNN: Right. Silver Peak is a unique
 09 one as well, too, Mr. Perot.
 10 MR. PEROT: You need to go through them all.
 11 MR. DRIVON: Further discussing outage games,
 12 transmission games, withholding games, ancillary service games.
 13 The next question was whether --
 14 CHAIRMAN DUNN: Before you do that, I want to
 15 just summarize on this, Mr. Drivon.
 16 So, what we have is, the ISO contract is signed
 17 in March of 1997. The PX contract, initial contract, is signed
 18 in September '97. The market opens in March of 1998.
 19 Perot Systems/Backus is marketing to Edison in
 20 May of '97, Enron in summer of '97, PG&E in late summer, early
 21 fall '97, SDG&E in mid-fall 1997.
 22 And it was -- and Mr. Schreiber, correct me if
 23 I'm wrong -- from your discussions with the various witnesses,
 24 it wasn't until SDG&E's representative, Mr. Cotton, who was on
 25 the ISO board, reported this seminar to ISO's then CEO,
 26 Mr. Tranen, that ISO had any knowledge of these marketing
 27 efforts. Is that true?
 0104 MR. SCHREIBER: That's true.
 01 CHAIRMAN DUNN: Correct me if I'm wrong,
 02 Mr. Perot. Tell me if you've seen any documents to the
 03 contrary: There was no advising by Perot Systems to ISO of the
 04 Edison contacts in the spring of '97, the Enron contacts in the
 05 summer of '97, the PG&E contacts in the late summer 1997. And
 06 in fact, it wasn't Perot Systems that advised the ISO of the
 07 SDG&E proposal. It was SDG&E that reported it to the ISO.
 08 Is your knowledge of it any different than that,
 09 Mr. Perot?
 10 MR. PEROT: I think what we should do is just lay
 11 out what you just said, send it to us, and then let us go
 12 through it and come back, make sure I give you a precise answer.
 13 CHAIRMAN DUNN: We'll be happy to do that,
 14 Mr. Perot.
 15 The concern that we have, and I'll just be
 16 honest --
 17 MR. PEROT: Sure. I want to give you an accurate
 18 answer.
 19 CHAIRMAN DUNN: I'll just share my concern. The
 20

21 concern with that is that, again, from an initial perception, it
22 appears that, A, from before, you're trying to market inside
23 information, a unique position that Perot Systems and/or Backus
24 had, and were marketing it without advising the ISO of what in
25 fact Perot Systems and Backus were doing. And it wasn't until
26 one of those recipients advised the ISO that they became aware
27 of it.

28 To some, it appears that Perot Systems was acting
0105 in secret to keep that from the ISO. And I would think that any
01 reasonable person would conclude that ISO should have at least
02 been advised, since you saw what ISO's initial response was.

03 We're probably going to have a dispute about what
04 ISO's ultimate response was, but certainly the initial response
05 we all agree on. It was vehement in opposition to those
06 marketing efforts.

07 That's the perception we see in reviewing it and
08 trying to understand why, at the very least, Perot Systems
09 wouldn't have advised ISO of each of those marketing efforts
10 through most of 1997.

11 And we appreciate your follow-up on it, and input
12 would be greatly appreciated, Mr. Perot.

13 Mr. Drivon.

14 MR. DRIVON: Number 444, please.

15 CHAIRMAN DUNN: While you're pulling that up, if
16 I could just try to drive a point home there, Mr. Perot, with my
17 apologies.

18 In today's Sacramento Bee, Mr. Reeves, who of
19 course is one of Perot Systems' spokespersons, even said, and I
20 quote, because the ISO, quote, "knew about our activities," end
21 quote.

22 It's a public statement like that, that I presume
23 was made yesterday to a reporter, that says to us, wait a
24 minute, there's an inconsistency.

25 ISO didn't know about the activities, not
26 until -- not Perot Systems -- but not until SDG&E advised
27 ISO.

0106 MR. PEROT: I'll get someone to ask Mr. Reeves,
01 and we'll get you an answer this afternoon.

02 CHAIRMAN DUNN: Greatly appreciated.

03 SENATOR PEACE: Mr. Chairman, if we're going to
04 be on that point, this may be as good a time as any.

05 As one who was part of the -- sitting on the ISO
06 Oversight Board at that time, and was briefed directly by
07 Mr. Cotton, this was at this point a total surprise to
08 everybody. Mr. Tranen was extremely agitated by it. In fact,
09 it's my belief that this was part of what led to Mr. Tranen's
10 decision to leave California. A month later, he announced that
11 he would only stay until, I believe, the end of '99.

12 But more significantly, the information provided,
13 as Mr. Perot has correctly testified, did become knowledge
14 amongst all of the participants.

15 Remember, you have a stakeholder board, and this
16 was in the middle of a fight between California and FERC over
17 whether FERC would approve of the California filing, which had
18 included only one change from the previously negotiated PUC-FERC
19 agreement. That one change was a nonstakeholder oversight
20 board. That oversight board was very concerned about this issue
21 as well as others.

22 Mr. Cotton brought it not only to the attention
23 of the ISO Board and Mr. Tranen, but also to myself as a member
24 of the Oversight Board.

25 The market was actually delayed in its opening,

27 in part because of concerns. And it isn't -- and again, as
28 Mr. Perot has correctly testified, not about the specific --

0107 01 many holes were plugged and the market was changed, but because
02 of the information that Perot and other analysts brought forward
03 that said: Any market system you design inherently can be and
04 will be gamed.

05 And that's why, when we opened that market then
06 in April, we went to FERC and said, "Please give us the
07 authority to put a cap in this market from Day One. We need a
08 cap because we can't prevent the gaming."

09 FERC was given all this information, fully aware,
10 and they authorized the ISO to keep that cap in place to the
11 extent they needed to do that.

12 In February of 1999, I met with then-Chairman
13 Hecker in Las Vegas, trying to negotiate their refusal to allow
14 our Oversight Board to stay in place. Ultimately we failed. We
15 had to give in to FERC's refusal, and the Oversight Board went
16 away.

17 It is not coincidental that the stakeholder board
18 then changed lawyers, and hired Swindler Berlin, which is, you
19 know, the lawyers of choice in the industry.

20 CHAIRMAN DUNN: Swidler.

21 SENATOR PEACE: Oh, did I say Swindler?

22 [Laughter.]

23 SENATOR PEACE: Sort of the lawyers of choice of
24 the energy industry.

25 And it is not coincidental that the Board began
26 hammering away at attempting to pull down the rate cap.

27 And ultimately, when people start looking at the
28 Enron economic experience in '99, where the cap was still in

0108 01 place, you're going to understand why Enron started vending
02 off-sheet partnerships and whatnot, because it was the money
03 they lost in '99 that they couldn't make up, even in their
04 horrendous profits in 2000.

05 CHAIRMAN DUNN: Mr. Drivon, let's go so we can
06 wrap it up.

07 MR. DRIVON: I'm going to refer an e-mail from
08 Paul Gribik, April the 9th of 1998, and just read a sentence
09 that shows that it was clear to him that gaming strategies could
10 be developed that were inappropriate. And that sentence says,

11 "Such strategies can be
12 developed to take inappropriate
13 advantage of a number of areas,
14 including flaws in the PX and
15 ISO tariffs and protocols."

16 CHAIRMAN DUNN: This is from who to whom?

17 MR. DRIVON: This is from Mr. Gribik regarding
18 market surveillance to Mr. Mobasher, and I believe he was with
19 the PX.

20 Actually this is a document pointing out to the
21 PX the need for them to be vigilant with respect to games. The
22 reason I'm reading it is, it's an illustration of the idea that
23 gaming as used in this situation is not limited to theoretic
24 models, but has to do with both appropriate and inappropriate
25 behavior, and that inappropriate use of that would be the
26 exploitation of flaws, otherwise sometimes known as warts.

27 CHAIRMAN DUNN: Okay.

28 MR. DRIVON: Could I have 444, please.

0109 01 MR. GREENBERG: Mr. Chairman, if we could,
02 please. We have our prior commitment.

03 CHAIRMAN DUNN: I understand. We'll wrap it up

04 in a few minutes.
05 To the key documents, Mr. Drivon.
06 MR. GREENBERG: We will have to leave in the next
07 five minutes no matter what.
08 CHAIRMAN DUNN: We'll try to accommodate you,
09 Counsel.
10 MR. DRIVON: Number 444, the third paragraph.
11 This is from Mr. Backus.
12 "I will write an (estimated six
13 page) paper that will go to a
14 SCE lawyer (and then presumably
15 to Heller) explaining what the
16 software can really do. I will
17 not imply that Perot will help
18 use with the gaming issues, only
19 that Perot will design the ISO
20 simulation to parrot the
21 existing system and that Perot
22 can clarify our understanding
23 of the existing ISO protocols
24 and system. I will have this
25 done [by morning]."
26 And it goes on to talk about the conflict of
27 interest issue.
28 CHAIRMAN DUNN: We've been on the search for that
0110 letter. It has not been found as of yet; correct?
01 MR. DRIVON: The six-page letter submission can't
02 be found.
03 CHAIRMAN DUNN: All right. Next, quickly.
04 MR. SCHREIBER: I'll just frame it while
05 Mr. Drivon's looking for the folder.
06 The next paragraph there discusses the conflict
07 of interest. This goes to what Mr. Perot was saying I earlier,
08 that if this really were a problematic proposition, the
09 marketing presentations that were being made, it would have
10 risen to the level of legal counsel. And in fact it did, it did
11 rise to the level of legal counsel. There was a series of
12 e-mails, letters, correspondence, back and forth.
13 MR. DRIVON: On the issue of what the ISO --
14 MR. GREENBERG: I'm sorry, Mr. Chairman, but
15 we're going to have to go. What we would do --
16 CHAIRMAN DUNN: Two minutes, Counsel.
17 MR. DRIVON: The ISO was still considering to --
18 or continuing to discuss the issue of conflict of interest up
19 until February of 1998.
20 CHAIRMAN DUNN: In fact, from your perspective,
21 it was never resolved.
22 MR. SCHREIBER: That's right. And I think it's
23 an inaccurate representation to say that the issue was resolved.
24 In fact, in my two conversations with Jeff Tranen, the former
25 CEO of the ISO, he indicates that the ISO never gave a green
26 light to Perot Systems to make any marketing presentation. I
27 think the documents support that.
0111 So, I'm not certain what you've been told by
01 counsel, but whatever you've been told that would lead you to
02 believe that the issue had been resolved is, from my
03 perspective, inaccurate.
04 MR. DRIVON: One more thing, and that's that
05 there was a direction that a ethics wall be set up, or, quote,
06 "Chinese wall" be set up. Apparently, such a document was
07 done. It was supposed to be signed by everybody. It was signed
08 by nobody.

10 CHAIRMAN DUNN: Okay.
 11 Here's what we'll do. Hopefully a Solomon
 12 approach, Mr. Perot.
 13 I will assume that pursuant to convenient
 14 schedules, you would return?
 15 MR. PEROT: Whatever you need.
 16 MR. GREENBERG: We'll evaluate that.
 17 CHAIRMAN DUNN: Well, we've already got
 18 Mr. Perot's response of whatever we need.
 19 What we will do, Counsel, is, one of the Perot
 20 representatives, not the formers, is going to remain.
 21 MR. GREENBERG: What we will do, and certainly
 22 any questions that you may have, please address to us in writing
 23 and we will respond.
 24 CHAIRMAN DUNN: Counsel, we're not going to
 25 address them in writing. We've got a lot of Perot folks here
 26 today. Certainly some are locally based. They can remain and
 27 determine the questions that we have.
 28 I'm going to allow Mr. Drivon and Mr. Schreiber
 0112 to finish the presentation.
 01 But we'll certainly respect your schedule,
 02 Mr. Perot, so you can go.
 03 MR. GREENBERG: No doubt about that, certain
 04 Perot folks will be here. There's not a problem with that.
 05 CHAIRMAN DUNN: That's what I want. And they can
 06 take their notes about the questions that this committee raises.
 07 We will ask for follow-up, and we'll work with you directly,
 08 Mr. Perot. I appreciate the fact you've always made yourself
 09 personally available to me. If necessary, I'll certainly do
 10 that.
 11 But at this point, what we will do is, we will
 12 take our break at this point.
 13 Mr. Perot, I'd like to thank you. We do have a
 14 lot of follow-up. I know you have a lot of follow-up to go. I
 15 said we've got concerns about inconsistencies. I'll be honest,
 16 they haven't been resolved. I know you don't know a lot about
 17 those documents, but we're going to have to do a lot more work
 18 together to come to some resolution about what Perot Systems'
 19 involvement was here it in California.
 20 MR. PEROT: The exciting thing to me is, the
 21 panel, after lunch, you're going to be talking to the people who
 22 know about these documents.
 23 CHAIRMAN DUNN: And we'll be exploring --
 24 MR. PEROT: The only one who'll be missing is
 25 Dr. Backus, because the way you had it put together, you had the
 26 people who were involved with the documents, understand the
 27 wording, so on and so forth.
 0113 The people here this afternoon are the people
 01 that I have a great deal of trust in and will tell you just the
 02 truth.
 03 CHAIRMAN DUNN: I'm going to make a prediction:
 04 Our questions will not be fully answered this afternoon.
 05 Mr. Perot, thank you and --
 06 MR. PEROT: I hope they will be.
 07 CHAIRMAN DUNN: Thank you. We'll be in touch
 08 with you.
 09 And thank you, Counsel. We'll be in touch.
 10 We will break for about 30 minutes or so, and we
 11 will be back.
 12 Mr. Schreiber and Mr. Drivon, there are some
 13 additional ones I want you to present at that time.
 14 We are in recess for 30 minutes.
 15

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[Thereupon the Select Committee
took the Lunch Recess.]
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AFTERNOON PROCEEDINGS

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CHAIRMAN DUNN: If I can ask Special Counsel to

04

sit down.

05

Welcome back, everybody. We're going to begin

06

without Senator Morrow. We understand he's moments away.

07

We want to finish touching upon some of the

08

documents that Mr. Drivon and Mr. Schreiber felt were critical

09

for the committee to review. I have asked them to condense them

10

to the most critical ones so we can get to Mr. Gribik and to

11

Mr. Shirmohammadi.

12

Why don't we open it up again. Mr. Drivon, you

13

are on.

14

MR. DRIVON: To one extent or the other, Senator,

15

we had to make a choice between reorganizing the documents at

16

lunch; lunch won.

17

CHAIRMAN DUNN: Understood.

18

MR. DRIVON: Could I have Q, please. I think

19

that the next -- maybe I'll just go through these kind of

20

quickly.

21

Question Number 3 is,

22

"Were any of Perot Systems'

23

market manipulation strategies

24

actually used by market

25

participants?"

26

And the question was answered through these documents in several

27

respects. First of all, the documents identify a number of

28

different manipulation techniques that could be used, including

0115

01

congestion games, different supply games, different withholding

02

strategies. And some of them were very precise and particular.

03

For instance, I think Document 10562, and I'm flying a little

04

bit blind here, this is a game that involves interzonal path

05

congestion.

06

I fully realize that I'm sitting here in the

07

presence of people who are world experts in this, and I'm not,

08

but this shows how a relatively small PX participant could

09

purposefully congest a small interzonal path.

10

One of the congestion games that was ultimately

11

used by a number of market participants, most famously Enron,

12

was called Silver Peak. And that particular intertie is

13

mentioned in this document. That's an intertie with a 30

14

megawatt capacity.

15

CHAIRMAN DUNN: May I interrupt, Mr. Drivon.

16

For those who are unfamiliar, what's an intertie?

17

MR. DRIVON: An intertie is a place in a

18

transmission line.

19

MR. SCHREIBER: Let me just add a couple things.

20

This particular document came from the 44-page

21

document that was originally discovered in Reliant's depository.

22

As we've come to understand through conversations

23

with Dr. Gribik and testimony provided today, this is considered

24

one of the two examples of the holes that Dr. Gribik closed.

25

The reason why I still think it's relevant here

26

is because the game that Dr. Gribik exposes or examines in this

27

particular example -- and I should note that this is a marketing

28

presentation, that we still don't know where it was delivered,

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01

although it was discovered in Reliant's depository. The Silver

02

Peak example is significant for two reasons, as I see it.

03

Number one, because Silver Peak is a highly

04

insignificant, in fact, maybe Dr. Gribik will testify to this,

05

perhaps the most insignificant intertie point coming into

06 California.

07 That it was used and held up as an example is
08 interesting for the second reason, and that is that in May of
09 1999, Enron intentionally scheduled 2900 megawatts on this 30
10 megawatt line.

11 CHAIRMAN DUNN: For clarification, Mr. Schreiber,
12 was the Silver Peak event that was taken up by the PX involving
13 Enron, did it occur in May of '99, or is that when the issue
14 became public?

15 MR. SCHREIBER: No, it occurred on May 24th of
16 1999.

17 As I'm sure Dr. Gribik will testify, this example
18 represents a hole in the protocol, or a gap in the protocol that
19 was fixed. Although, I think I would argue that despite this
20 particular or very specific protocol gap being plugged, to use
21 his words, Enron used a fundamentally similar strategy to game
22 the market a year later, and that is overscheduling a line in
23 order to reap a congestion charge.

24 CHAIRMAN DUNN: Mr. Drivon.

25 MR. DRIVON: Yes. And I think that -- that these
26 gaps, or potentials for games, can be expressed in many ways and
27 are subject to almost infinite variation. It's a little bit
28 like -- closing these holes is a little bit like trying to

0117
01 outlaw assault weapons by precisely describing each one, which
02 results, then, in a slightly different version which is still
03 available.

04 For instance, to give you a little bit of an
05 overview in that regard, if I could have 10772. Imperfections
06 or gaps in the protocols result in both opportunity and risk.
07 That's pointed out here: "Opportunities for increased profits,"
08 and a "Chance for other players to damage your position," are
09 one of the many kinds of risks.

10 So, we saw in some of the other documents where
11 both the potential for profit and recognition of the need to
12 control risk were both addressed by the Perot-Backus consortium
13 in their presentations.

14 CHAIRMAN DUNN: Let me put that in lay terms.
15 What you find, in your opinion, is strategies
16 that were both offensive and defensive.

17 MR. DRIVON: That's right.

18 And for instance, Southern California Edison, in
19 several of the documents that we found, were interested in
20 exploring both offensive and defensive maneuvers, as were
21 others. And I don't think there are any market participants, at
22 least that I know anything about, who did not attempt to utilize
23 both sides of the strategy.

24 Another document is Number 271. This is another
25 part of the previously referred to undated letter from Dr.
26 Backus to John Jacobs at PG&E in conjunction with the
27 presentation made by Perot-Backus to PG&E.

28 The next to the last paragraph, please.

0118

01 "As you and we have discovered,
02 it takes many months to change
03 a protocol or rule -- from a
04 review committee to software
05 testing. In the interim the
06 game remains 'legitimate.' In
07 the California instance, the
08 interim rules of the PX/ISO are
09 causing \$1B/year loop-holes.
10 Previously the rules were in
11 favor of the IOUs. During this

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transition without the
hour-ahead and the day-ahead
price discovery, the non-IOU
schedule coordinators (SCs) now
have significant advantages.
After the 'system' goes to full
implementation, the IOUs can
again play, by their own design,
very nasty congestion games
(even when there is no
congestion) with the scheduling
coordinators."

This was information that was passed on and
suggested by the Perot-Backus combination in this instance to
PG&E, how these varied types of congestion games were possible
and could be used, in this case, by IOUs. We know that they
were later used extensively, and that Enron got caught at least

once that we know of.

CHAIRMAN DUNN: You're referring to Silver
Peak?

MR. DRIVON: I'm referring to the Silver Peak
incident for which they were caught.

SENATOR PEACE: You never got to the point on the
market where the IOUs would -- because the market blew up before
that evolution occurred.

But the series of events they're describing is
the point entries where the rules were set up in such a way --
and this was a conscious decision by FERC. If you read FERC's
two years of hearings, they look at the issue of market power,
they analyze it only in the context of potentially being
exercised by utilities, by vertically integrated utilities.
That's why they biased all of the mechanisms they set up in the
transition period, to prevent the utilities from being able
to -- it's what they referred to as the open access to the
grid.

Congress had passed a law saying, you have to
assure nondiscriminatory access. And FERC chose to interpret
that statute as open access. And that's kind of the heart of
the FERC market-based tariff paradigm.

So, you had this series of evolutions of the
market, where they, FERC, had purposely required that the deck
be stacked against the utilities. And then our Public Utilities
Commission, by virtue of its rules and its mandatory 50 percent
sell-off of generation assets, kind of piled on that
circumstance.

MR. DRIVON: Well, another point I think to be
made is that a continuing refrain is, well yes, you know, this
or that may have been done, but there's nothing in the
protocols, there's nothing in the tariffs that prevent it from
being done.

In some instances, that may excuse the behavior,
but in other instances, it's likely that it does not. For
instance, if you talk about a congestion management game whereby
a market participant promises to relieve congestion by moving
energy, and is paid for that promise, and thereafter relieves no
congestion and moves no energy, it is likely to be found that
that would fit all of the necessary elements for a violation of
the Penal Code section involving obtaining money by false
pretenses, and that solicitation to engage in such activity
could be viewed as solicitation to obtain money by false
pretenses. And if the amount involved were in excess of \$400,
that would be grand theft, because you've promised, in exchange

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18 for being given money, you've promised to do something that you
19 didn't intend to do, and in fact, never did.

20 So, while you may find a hole in a tariff that
21 makes it okay to do that, saying that you're then cleared with
22 respect to that activity and its propriety is a little like
23 saying that if you can't find a prohibition against murder in
24 the Health and Safety Code, it must be okay.

25 So, sometimes people take a little too narrow
26 view.

27 SENATOR PEACE: And isn't that what the -- I
28 can't remember whether it was a Backus memo or Edison memo,

0121

01 where the writer is arguing that, I need the Perot people
02 because my experience with utility people is they're too worried
03 about the integrity of the system? Isn't that exactly what the
04 argument that's being made, I mean, I believe the word was
05 people that are devious enough --

06 SENATOR DUNN: Devious minds, I believe it was.

07 SENATOR PEACE: Right -- to really, and now my
08 words, to be indifferent to whether their conduct is consistent
09 with the intent of making the system work, and focused, you know
10 -- and I would argue, Backus' documents make it infinitely
11 clear, that there was an overt intention to blow the market up.
12 There were targets. This is a game; it was a war game.

13 And the goal of any Texas competitor is not to be
14 a victor in the competition; it's not to end until there are no
15 competitors left. And that's what the goal was: Destroy PG&E;
16 destroy Edison; and most important, destroy the Power Exchange.

17 And what went down first at the hand of their
18 partner in crime, FERC? What is the first thing FERC did? It
19 destroyed the Power Exchange, which was the ultimate goal,
20 because it was the Power Exchange that successfully kept prices
21 transparent, and as a consequence, kept prices low by working in
22 concert with an ISO price cap throughout '99. And it wasn't
23 until they blew the price cap off that they were able to exploit
24 the market.

25 CHAIRMAN DUNN: Senator Bowen.

26 SENATOR BOWEN: Thank you.

27 Mr. Drivon, as you work through this, there's one
28 other thing that I'd like you and the committee members to keep

0122

01 in mind. The little piece that we saw in the Bee a couple days
02 ago dealing with this committee's effort, I think, while
03 generally good, missed the main point of this investigation,
04 which is, the question is not just was the conduct at hand
05 illegal, because that is not the standard in the Federal Power
06 Act.

07 The Federal Power Act requires that wholesale
08 prices be just and reasonable. And you can have a result in
09 which conduct is not necessarily illegal, but the resulting
10 prices are not just and reasonable.

11 So, asking whether the conduct is illegal is the
12 wrong inquiry under the Federal Power Act. And this committee's
13 focus needs to be what resulted in prices that everyone agrees
14 were not just and reasonable, not simply what conduct was
15 illegal.

16 Now, FERC's enforcement of that federal law is
17 another matter. But the standard has to be the Federal Power
18 Act. That is what we're all aiming at. Were the resulting
19 prices just and reasonable?

20 So, as you work through this, if you would help
21 us understand the impact on whether prices were just and
22 reasonable, that will help the committee to understand how
23 future power markets or power sales paradigms should be shaped.

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24 CHAIRMAN DUNN: I want to return to just one
25 editorial comment.
26 We're trying earnestly to get the author of that
27 article to understand that. Hopefully, one day we'll succeed. I
28 have tremendous respect for him, and hopefully we'll get there
0123 one day.
01 SENATOR PEACE: I suspect he's going to be moving
02 to being Mr. Ossi's PR flack before long anyway.
03 CHAIRMAN DUNN: I won't touch that one.
04 Mr. Drivon.
05 MR. DRIVON: And that's the point, of course,
06 Senator. All of these games, in one way or the other, impact
07 on whether or not, and in what fashion, a market participant, or
08 a combination of market participants, might exercise market
09 power either in a general or in a locational way.
10 And the exercise of market power is something
11 that generally, if found, would be the antithesis of just and
12 reasonable rates.
13 CHAIRMAN DUNN: Let's return to the documents.
14 MR. DRIVON: On the issue of conflict of
15 interest, if I could have 1112, please. This is a draft
16 document from the ISO, and pursuant to our agreement, these
17 documents will not be made a permanent part of the record of
18 this committee.
19 CHAIRMAN DUNN: Tab 25, for committee members.
20 MR. DRIVON: The ISO defined what they thought
21 conflict of interest would be in this framework. There's a long
22 paragraph, starting about in the middle, and about seven lines
23 down, there's a line. The sentence starts, "Under that
24 framework."
25 CHAIRMAN DUNN: Let me interrupt for just one
26 second.
27 Counsel, so you guys know, the book that you're
28 using, we're happy to provide you copies of. Everything else
0124 you can take. That one, you can't take.
01 Go ahead, Mr. Drivon.
02 MR. DRIVON: [Reading text]
03 "Under that framework, a
04 conflict would exist if Perot
05 took on other employment
06 regarding the same matter they
07 worked on for the ISO, or a
08 substantially related matter to
09 the matter on which they worked
10 for the ISO."
11 So, that was the working definition of conflict
12 of interest in this situation. And this draft was of a
13 memorandum to the executives at the ISO by the legal people
14 involved, and is dated November 14th, 1997.
15 And to the extent that Mr. Perot was informed
16 that, after a conference with the ISO, there was a decision that
17 there had been no conflict of interest, I think he didn't know
18 about some of these documents, and this is one of them.
19 Then I have a document that has not been
20 scanned. What it is, is an e-mail from Dr. Backus to Mr. Jacobs
21 at PG&E with a copy to Mr. Gribik and a copy to Hemant Lall.
22 MR. SCHREIBER: Donna, if you could call up 665.
23 This is not the document, but this'll be the next document we
24 use.
25 MR. DRIVON: This document, in the middle of it,
26 it says,
0125

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01 "In other words,"
02 and this is a document from Backus to PG&E, with copies to
03 Dr. Gribik,
04 "In other words, if PG&E plays by
05 the 'spirit of the law' instead
06 of the 'letter of the law,' it
07 will surely lose against those
08 who cannot resist the tens if
09 not hundreds of millions of
10 dollars that can be easily had
11 at the expense of the 'naive.'"
12 MR. SCHREIBER: I guess I would, at that point,
13 ask you to call up the second paragraph there. It's possible
14 that it's the first.
15 MR. ARONICA: Excuse me, Senator. Could we have
16 a copy of that document? I don't believe it's in the book here.
17 MR. SCHREIBER: It's not in the book.
18 CHAIRMAN DUNN: You'll have to forgive us. About
19 3:00 a.m. this morning, we were trying our best.
20 MR. ARONICA: Absolutely. Thank you.
21 MR. SCHREIBER: The first two paragraphs of the
22 general statement.
23 MR. ARONICA: May we take this with us?
24 CHAIRMAN DUNN: It's our understanding that it's
25 not confidential, so okay.
26 Mr. Drivon and Mr. Schreiber.
27 CHAIRMAN DUNN: Again, that is the Perot Systems'
28 standard of ethics, ensuring compliance with not only the letter
0126 but the spirit.
01 MR. DRIVON: Right.
02 "The core concepts of the
03 Perot Systems Standards and
04 Ethical Principles are honesty
05 and integrity. Business should
06 be conducted in accordance with
07 both the letter and the spirit
08 of the applicable laws of each
09 country, state, or other
10 locality in which Perot Systems
11 does business.
12 "These basic principles
13 concern every Perot Systems employee,
14 Fellow, Director, and Advisory
15 Board member (cumulatively
16 'Associates'). Everyone in the
17 company is asked to commit to
18 these principles in the form of
19 this pledge."
20 Then it goes on to state what the pledge is.
21 MR. SCHREIBER: Just to tie that together with
22 the PG&E or NEG e-mail, there seems to be a suggestion in the
23 NEG e-mail that it's possible to operate on a continuum in which
24 you can choose the letter or the spirit of the law.
25 I guess I would suggest that there's a bit of a
26 conflict between the stated ethical principles that Perot
27 Systems employees were expected to sign, and the tenor and tone
0127 of Mr. Backus' e-mail.
01 MR. DRIVON: And the point of that, Senator, is
02 that one of the documents I referred to just a moment ago
03 indicated that even when these holes, loopholes, warts,
04 whatever, were discovered and attempts made to close them, that
05 it would take a long period of time to do so, during which long

period of time those activities would remain, quote, "legitimate," unquote.

So, not only are we talking about skirting the intent of the law, but we are talking about exploiting a situation in which they know that the law is going to be changed, and the process is in place, and then take advantage of the lengthy process that's necessary to do that.

MR. SCHREIBER: Call up 478, please.

This is part of an e-mail exchange between Perot Systems folks. I believe it's the second and the third paragraph on those pages.

This particular exchange was written by Dr. Shirmohammadi.

CHAIRMAN DUNN: We're try to get the tab number here. Aren't e-mails all one tab? That will be Tab 18. That would be, I believe, the whole set of e-mails.

On which date again?

MR. SCHREIBER: This is a May 8th, 1997 e-mail. It was originally part of an internal Perot Systems discussion between a number of different Perot Systems associates.

CHAIRMAN DUNN: I believe what you'll find is in Tab 18, if you go through them, I think they should be in

chronological order.

It's May 18? What's the Bates stamp? It was produced in several different ways, all of which received different Bates stamp numbers by the producer. But we do have it up on the board.

Okay, my apologies.

MR. SCHREIBER: I just want to bring your attention to the second paragraph there. This is a discussion between Dr. Shirmohammadi and other associates at Perot Systems. This is in discussion, their internal discussion, about whether or not they should sign an exclusivity agreement with Edison, et cetera. It says,

"Finally, I do believe at this time we should concentrate on doing the work for one company only, say SCE, and learn from the process. We should, however, start to market our future services as an alliance with George Backus in the industry. In doing all of this, we need to make sure that there is no conflict with the ISO project so far as propriety is concerned."

The reason why I think this is a significant e-mail is because no efforts were undertaken to alert the ISO, as you've indicated, Senator Dunn. In fact, these meetings were

all secret.

MR. DRIVON: And that comes forth in a number of these documents, many of these documents, where the Backus-Perot alliance was suggesting that the presentations and discussions be kept to a very small group within a particular circle of one of the people to whom they were presenting, and that the secrets that they were putting forward not be shared even widely within the company to whom the presentation was being made.

And there were secrecy agreements that were proposed in some of these prospective alliances, and even references to destroying some of the documentation that was

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13 being authored, and offers to present the documentation in an
14 edited fashion, and in a way that would not present so many
15 problems if discovered. And further, at least one attempt to
16 shelter the information and the document from prying eyes by
17 passing it through an attorney to cloak it with the privilege.

18 The next question that I have here is, what was
19 the ISO's response to these marketing activities of Perot
20 Systems?

21 And again, this problem first was brought to the
22 attention of the ISO by one of its own directors, apparently in
23 October of 1997.

24 As a matter of fact, the ISO developed -- I found
25 a list of correspondence with respect to the Perot conflict of
26 interest question that details 14 different letters, e-mails,
27 memoranda, et cetera, and we know that there are some documents
28 going into February of 1998.

0130
01 But there is nothing that we have found, and
02 we've looked diligently, to indicate that there was ever any
03 disclosure by Perot Systems or by Backus to the ISO at any time
04 that they were marketing this knowledge, or making these kinds
05 of attempts in the market. And there are a number of documents
06 going back and forth between Perot Systems and the ISO, and ABB,
07 and others, concerning this.

08 And at one point, it was determined that the
09 Perot folks would develop an ethical wall, and would have
10 ethical disclosure documents and agreement documents signed by
11 everyone at Perot that might be involved.

12 According to the news conference that was given
13 by Mr. Perot the day or two after this occurred, my memory of
14 that news conference is that they then and there admitted that
15 the ethical wall had never been established. And we have
16 determined by questioning that no one ever signed any agreement
17 with respect to these matters as requested by the ISO.

18 CHAIRMAN DUNN: Let me read exactly what you're
19 referring to. I'm about to read a short passage from a
20 transcript made of the press conference, primarily with the
21 financial community, held by Perot Systems, I believe, on June
22 6th. I may be one day off there, but I believe it was June
23 6th. It was and still is available, by the way, as I understand
24 it, on the Perot Systems website. And it was attended by
25 Mr. Perot, Senior, Mr. Perot, Junior, who was the President and
26 CEO of Perot Systems, as I understand it, as well as Russell
27 Freeman, who is CFO or CO, one of the top officers in the
28 company.

0131
01 Here is his quote,
02 "The former ethics wall
03 identified in the letter,"
04 that Mr. Drivon was referring to,
05 "to the ISO appears not to have
06 been implemented. However, our
07 account managers have confirmed
08 that they communicated the
09 importance of confidentiality to
10 all Perot Systems associates and
11 the independent contractors
12 working at the CalPX and ISO."

13 Mr. Drivon, did you have further on this one? I
14 do have a couple questions.

15 MR. SCHREIBER: Just one additional document on
16 this issue. It appears to be -- this is 1114.

17 This is again a Skadden, Arps attorney-client
18 communication that was provided to us by the ISO.

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19 MR. DRIVON: It's the center paragraph.
20 CHAIRMAN DUNN: Tab 25, members.
21 MR. SCHREIBER: And the key there is, starts at
22 the fourth line.
23 We had asked ourselves, and as Mr. Drivon has
24 gone down this list of questions, and the heading on this right
25 now is, what was the ISO's response to the marketing activities?
26 What we've discovered is that the ISO responded
27 very strongly and sternly, and offered a cease and desist
28 letter. There was some correspondence back as forth, but from
0132 their own internal attorney-client communication, the second
01 sentence there says,
02 "If Perot refuses, however,"
03 And he's referring to signing a disclosure or disclaimer that
04 says that they have not -- that they are not revealing any
05 confidential information,
06 "If Perot refuses, however, our
07 options are somewhat limited and
08 all quite confrontational. We
09 could terminate the contract, but
10 that seems extreme given the
11 Alliance's importance to meeting
12 the 1/1/98 at this delicate
13 point in time."
14 CHAIRMAN DUNN: What's that implication in your
15 opinion, Mr. Schreiber?
16 MR. SCHREIBER: In my opinion, I think Perot
17 Systems was in a very unique bargaining position here with the
18 ISO. By that I mean to say that the ISO was under tremendous
19 political pressure, which I'm sure several members here would be
20 more well versed in discussing than I, but essentially, there
21 was a lot of political pressure to get the market open on time,
22 and Perot Systems was a critical, if not the most important
23 piece, in having that happen. And it made a confrontation with
24 Perot Systems very undesirable.
25 CHAIRMAN DUNN: In other words, if in late fall
26 of '97 they got confrontational with Perot Systems, you read
27 that as suggesting it would jeopardize the ability to open the
0133 market on January 1, '98.
01 MR. SCHREIBER: That is exactly how I read it.
02 SENATOR PEACE: And what was happening on the
03 policy-making side at that point is, the Oversight Board
04 publicly told the ISO, "Take as long as it takes. Do it right."
05 In fact, there were news articles quoting me
06 saying that, whatever it takes.
07 In the meantime, FERC was beating the crap out of
08 them to get it open, because the energy companies, Enron at the
09 lead, were pulling the chain at FERC to put the pressure on to
10 get the market open.
11 CHAIRMAN DUNN: Any more on this issue?
12 Let me ask a couple questions. From either
13 Mr. Drivon or Mr. Schreiber.
14 From your review of the correspondence in the
15 fall of '97 and early '98 between the ISO and Perot Systems, as
16 well as a review of legal counsel's material that were produced
17 to the committee after a limited waiver of the attorney-client
18 privilege, did you find any evidence -- I'm sorry, and I should
19 add, and Mr. Schreiber, your interviews with a variety of
20 witnesses -- did you find any evidence anywhere that ISO ever
21 granted approval, authority, or simply acquiesced in the
22 continuation of the marketing strategies by Perot Systems?
23 MR. DRIVON: The answer is no, and quite to the
24

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25 contrary. Specific inquiry was made of Mr. Tranen, who was in
26 charge at that time, and he was quite vocal with Mr. Schreiber
27 in expressing the fact that there had never been an approval of
28 this activity by Perot, approval by the ISO.

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01 CHAIRMAN DUNN: Mr. Schreiber, you spoke to
02 Mr. Tranen. Tell us where he is and what he said.

03 MR. SCHREIBER: Mr. Tranen lives in New York, as
04 far I know, and I've spoken to him twice now. He works for --
05 and it's going escape me here as I sit here. I apologize -- he
06 works for an energy company on the east coast that's actually
07 based out of Boston, but I believe he lives in New York.

08 His recollection of the events, he felt more
09 comfortable having us rely on the documents provided by ISO.

10 And the one thing he was clear in both occasions
11 to me was that the ISO, and him specifically, never issued any
12 kind of green light to Perot Systems to make these
13 presentations.

14 CHAIRMAN DUNN: Okay.

15 I want to read you two statements from the same
16 transcript that I identified before of the press conference held
17 by Perot Systems. And the question, I'll pose it before I read
18 them, is: Given your investigation, are these statements
19 correct?

20 The first statement was by Russell Freeman in
21 this transcript of June 6th, I believe, and he stated, and I
22 quote,

23 "Mr. Tranen recognized that we
24 would continue our marketing
25 activities within the framework
26 outlined in the letter."

27 Do you have any evidence that that statement is
28 correct or incorrect?

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01 MR. SCHREIBER: I believe that statement is
02 false.

03 CHAIRMAN DUNN: Based upon your investigation?

04 MR. SCHREIBER: Based upon -- yes, based upon our
05 investigation.

06 CHAIRMAN DUNN: One more that I'd like to read.
07 At the end of the press conference there was a Q&A period.
08 There was a question posed by Bill Loomis, who is with Bates
09 Matrix. His question is as follows,

10 "Even if you developed the
11 software and had a consulting
12 engagement, is it your opinion
13 that still would not be a
14 conflict of interest because of
15 your meetings with the ISO?"

16 Mr. Ross Perot, Senior, responded,

17 "Yes, that was agreed upon that
18 we could do that."

19 Is that correct?

20 MR. SCHREIBER: That's not correct. Mr. Perot
21 made that representation today, and it was incorrect today.

22 Under no circumstances, and using no thresholds,
23 can you find a scenario in which any marketing presentation that
24 resembled the marketing presentations provided to SDG&E, were
25 those ever approved by ISO management or the Board.

26 And I would go so far as to say that when Perot
27 Systems responded, there was a -- we referred to this chain of
28 correspondence back and forth, there was an October 22nd letter

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01 from Jeff Tranen to Perot, which was very sternly worded; there

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02 was an October 24th response from Ron Nash of Perot back to Jeff
03 Tranen. There was a subsequent meeting in between, and then
04 Mr. Tranen wrote on November 24th, if I'm not mistaken, back to
05 Perot, suggesting that -- a possible solution. And the tenor of
06 his letter suggests that they were very close.

07 Perot then responds, this time, I believe, it was
08 their counsel, Charles Bell, wrote back to the ISO with an
09 alternative solution. And in that alternative solution, and I
10 believe we have the document scanned in, but he suggests three
11 things that would absolve -- excuse me -- resolve any conflict
12 that ISO might have.

13 And at no time did Perot Systems ever undertake
14 any of those three things. So, they didn't even satisfy their
15 own suggestion of a resolution.

16 CHAIRMAN DUNN: Last question. It's my
17 understanding that somewhere in that process, Mr. Schreiber, ISO
18 wanted to know the identities of the entities that Perot Systems
19 and/or Backus had already approached about marketing the
20 strategies that could be utilized within the market.

21 Is that correct? And if so, what response did
22 ISO receive from Perot Systems?

23 MR. SCHREIBER: That is correct. Jeff Tranen
24 asked Perot Systems to identify the market participants that had
25 received a marketing presentation similar to the one that was
26 received by San Diego Gas and Electric.

27 Ron Nash's response to Jeff Tranen flatly refused
28 to identify those people. And in my opinion, the implication of

0137 his letter is that San Diego Gas and Electric violated a
02 confidentiality agreement by disclosing that they had ever
03 received a presentation.

04 CHAIRMAN DUNN: Are you suggesting that in the
05 marketing presentation to these individuals, Perot Systems
06 and/or Backus demanded confidentiality about those
07 presentations?

08 MR. SCHREIBER: Yeah. I mean, I don't think it
09 could be any more clear that these were secret meetings.

10 CHAIRMAN DUNN: So, what you're saying is,
11 Mr. Nash seemed more upset that SDG&E advised ISO of the
12 presentation.

13 MR. SCHREIBER: I certainly think that was on his
14 list of complaints.

15 CHAIRMAN DUNN: Mr. Drivon.

16 MR. DRIVON: If I could have 1133. These are
17 hand-written notes from late November of 1997.

18 CHAIRMAN DUNN: Number 25, members.

19 MR. DRIVON: Part of the limited waiver of
20 attorney-client.

21 And I want to go about two-thirds of the way
22 down, right there.

23 This is difficult to read.

24 CHAIRMAN DUNN: You're going to have read it for
25 us.

26 MR. DRIVON: [Reading text]

27 "We wanted them to go back,"
28 talking about ISO wanting Perot to go back,

0138 "and say 'We won't do this' --
01 They said NO. We asked for
02 firewalls -- clarify to anyone
03 participating that they couldn't
04 use inside knowledge -- we
05 wanted to say 'weakness in
06 underlying economics, not
07

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08 system ' Meeting with Jeff and
09 a guy from Perot -- the guy
10 agreed to everything and
11 couldn't sell it to Perot back
12 home. "

13 CHAIRMAN DUNN: Thank you, Mr. Schreiber, for
14 helping Mr. Drivon.

15 MR. DRIVON: The eyes are younger.
16 If we could have 1138, please. And a little more
17 than halfway down, right there. That's fine.
18 Another writer also with the legal team for the
19 ISO,

20 "Ron Nash at Perot yessed JOT, "
21 that would be Jeff Tranen,
22 "to death at recent meeting.
23 Perot won't back down
24 disclosure ... "

25 MR. SCHREIBER: [Reading text]
26 "Chinese wall documents ... "

27 MR. DRIVON: [Reading text]
28 "What came back was inadequate. "

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01 These notes were made with respect to meetings
02 that were had in late November of 1997, a month-and-a-half after
03 this issue first surfaced, and indicate, obviously, the extent
04 of cooperation that they were getting from Perot with respect to
05 this.

06 And Ron Nash is a Perot person. He's not a
07 Backus person.

08 These were taken back to Perot, who, of course,
09 was the ISO contractor, not taken back to Backus.

10 MR. SCHREIBER: This is not scanned in.

11 MR. DRIVON: This one isn't scanned in. This is
12 to Ed Smith, PSC 004210.

13 CHAIRMAN DUNN: It's not in the book. Again, my
14 apologies to committee members. That was probably 3:10 a.m.

15 MR. DRIVON: This is from Ralph Masiello,
16 M-a-s-i-e-l-o-o, to Ed Smith with copies to Chuck Bell.

17 CHAIRMAN DUNN: Identify Ed Smith again.

18 MR. DRIVON: Ed Smith is with Perot or was. Chuck
19 Bell was an attorney there, and others, including Dr. Gribik.

20 CHAIRMAN DUNN: Before you read, Alex, is it a
21 confidential document?

22 We don't think so. We'll try to get copies here.
23 Go ahead, Mr. Drivon.

24 MR. DRIVON: This says,
25 "I spoke with the ISO yesterday
26 evening. "
27 that's November 6th, so it would have been November 5th,
28 "I was told that Jeff Tranen had

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01 passed Perot's response to 'the
02 lawyers' to evaluate their
03 concern is related, was to be
04 sure that it provided adequate
05 protection for the ISO should
06 someone question them over the
07 issue, that is. Can they show
08 that they've done enough to put
09 the issue to rest and to assure
10 themselves that there are no
11 'trap doors' or flaws in the
12 system. "

13 So, those were the ISO's concerns. And we've

14 seen the documents where Backus was talking about having ID'd a
15 thousand flaws.

16 MR. SCHREIBER: I might just refine that,
17 actually.

18 Charles Bell, Mr. Chuck Bell, is the author of
19 that e-mail, or at least he printed it out. Maybe that's not
20 clear to me, but that appears to be their perception of the
21 ISO's concerns.

22 CHAIRMAN DUNN: State it in lay terms,
23 Mr. Schreiber, from your perspective.

24 MR. SCHREIBER: The ISO was concerned -- or
25 their perception of the ISO's concern was that inside
26 information was being disclosed, and that it could compromise
27 the integrity of the market.

28 MR. DRIVON: And other documents we looked at

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01 earlier set that out specifically.

02 There are a number of other letters back and
03 forth. Then there is a letter --.

04 CHAIRMAN DUNN: Are you looking for a copy of it?

05 MR. SANDERS: Can I just look at that briefly?

06 CHAIRMAN DUNN: You may.

07 MR. DRIVON: Then the last letter that we have
08 was sent to Skadden, Arps to Martin Hoffman, an attorney who had
09 been working on this since the beginning. And it was sent by
10 Charlie Bell, and it says -- it's 509, first paragraph.

11 CHAIRMAN DUNN: Tab Number 17 [sic].

12 MR. DRIVON: [Reading text]

13 "On November 26th, 1997, "

14 This is February the 9th, so this would be two-and-a-half
15 months.

16 "On November 26, 1997, Perot
17 Systems Corporation proposed to
18 take certain steps to address
19 concerns raised by Mr. Jeffrey
20 Tranen of the California
21 Independent System Operator
22 Corporation with respect to our
23 consulting services. We have
24 not received a response to our
25 letter, but wish to assure
26 Mr. Tranen of our continued
27 commitment to act in an
28 ethically responsible manner. "

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01 And, of course, if we could have 674.

02 CHAIRMAN DUNN: Same tab.

03 MR. DRIVON: There are three bullet points in the
04 middle of the page. The letter that Mr. Bell's referring to is
05 this letter. And what was being asked for on behalf of the ISO
06 in this letter was,

07 "1. A 'Disclaimer' proposed to
08 be used in Perot Systems' sales
09 and marketing presentations
10 involving the California energy
11 market deregulation. "

12 I'm sorry, it was Perot Systems' offer.

13 "2. A 'Letter' proposed to be
14 sent to potential participants
15 in the California energy market
16 to whom Perot Systems has made
17 sales and marketing
18 presentations.

19 "3. An 'Ethics Wall' proposed to

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be invoked formally for Perot
Systems associates working with
the ISO."

CHAIRMAN DUNN: Again, for refreshing everybody's
memory, Skadden, Arps was the law firm for ISO at that time.

MR. DRIVON: That's right. So, Mr. Bell is
proposing this. And there was no response, no written response
by the ISO to this that we've been able to find. We believe
there was none.

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But similarly, there was no disclaimer in the
marketing presentations that were done. For instance, the one
hundred and something page Reliant thing was a workshop
presentation. It did contain such a disclaimer. The 44-page
document that we got from Reliant was described in a phone call
to Mr. Schreiber by Dr. Gribik as a sales presentation. That
one did not include the disclaimer that they're talking about
here.

The letter proposed to be sent to market
participants. To our knowledge it was never done. And by the
admission of Mr. Perot personally, the ethics wall was never
established. And no agreements to adhere to the ethical wall
were ever signed by any Perot Systems people.

CHAIRMAN DUNN: Let me just make one correction.
In the transcript from the press conference on
June 6th, it was Mr. Freeman who made that statement, not
Mr. Perot.

MR. DRIVON: That is the greatly abbreviated
version of what we have found.

I know that there can be differences of opinion
as to what the word "abbreviated" means, but this is a part of
what we found, and a small part.

CHAIRMAN DUNN: And I appreciate it, because I
know the two of you have been taking documents out of, many
documents, of what was going to be presented today.

Certainly where they can be made publicly
available, we will. As you noted, Mr. Drivon, those that are
confidential will not be made part of the record, will not be

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distributed publicly.

Anything further, Mr. Drivon, Mr. Schreiber?

MR. DRIVON: No.

CHAIRMAN DUNN: All right.

Any questions from the committee? If there are
none, let's go right into Mr. Gribik and Mr. Shirmohammadi.

MR. SANDERS: May we have a few minutes?

CHAIRMAN DUNN: Of course.

Members, you should have been provided a prepared
statement of Mr. Shirmohammadi as well as Mr. Gribik.

Having Senator Morrow back with us, we are back
live. You are ready to go.

Before Chris does his official duty, why don't we
start from my left and go all the way to my right, identify who
you are, if you're legal counsel for one of the witnesses, name,
and also the law firm you represent would be appreciated.

MR. LAWRENCE: Greg Lawrence from the law firm of
McDermott, Will and Emery. I'm here.

MR. SANDERS: Jim Sanders from the law firm of
McDermott, Will, and Emery for Dr. Shirmohammadi.

DR. SHIRMOHAMMADI: Dariush Shirmohammadi, I am
Dariush Shirmohammadi.

MR. ARONICA: Joe Aronica from Porter, Wright on
behalf of Dr. Gribik.

DR. GRIBIK: Paul Gribik.

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26 MR. SCHILLING: Bryan Schilling from Porter,
27 Wright, also representing Dr. Gribik.
28 CHAIRMAN DUNN: Mr. Shirmohammadi and Mr. Gribik,
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01 we'll do you both at the same time. Stand up, raise your right
02 hands.
03 Senator Bowen.
04 SENATOR BOWEN: This is the panel that Mr. Backus
05 would have been on; is that correct?
06 CHAIRMAN DUNN: This is the panel that we would
07 had Mr. Backus on, correct.
08 SENATOR PEACE: Good thing he didn't show up. We
09 wouldn't have had room for his lawyers.
10 [Laughter.]
11 CHAIRMAN DUNN: Chris, if you'd do your duty,
12 please.
13 [Thereupon the witnesses,
14 DARIUSH SHIRMOHAMMADI and
15 PAUL GRIBIK, swore to tell
16 the truth, the whole truth,
17 and nothing but the truth.]
18 CHAIRMAN DUNN: Thank you.
19 We gave you guys the choice of who wanted to go
20 first. Who's the lucky one?
21 MR. ARONICA: Dr. Gribik will go first.
22 CHAIRMAN DUNN: All right.
23 Mr. Gribik, please.
24 DR. GRIBIK: Good afternoon, Mr. Chairman and
25 members of the committee.
26 My name is Paul Gribik. I have a B.S. in
27 electrical engineering, a Master of Science in industrial
28 administration, and a Ph.D. in operations research.
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01 CHAIRMAN DUNN: Sorry, Mr. Gribik. I have some
02 misbehaving committee members. Ignore them, please.
03 DR. GRIBIK: Very good.
04 As you know, I have experience and I am familiar
05 with the California energy markets. My knowledge stems from
06 applications of economic theory and reality to the California
07 energy markets, and from reviewing the public protocols
08 promulgated by the ISO and the PX.
09 Today, I want to clarify my role at the ISO and
10 the PX through my employment with Perot Systems Corporation, and
11 clarify the 44-page document that initiated this committee's
12 inquiry into the California energy markets.
13 Before I proceed with that, however, the bottom
14 line is that through my work on the ISO and PX markets, I did
15 not engage in any work or marketing efforts that conflicted with
16 my obligations to the ISO and the PX. I did not engage in
17 consulting work for a market participant, as Perot Systems was
18 never hired to perform such work.
19 I never advised anyone on how to engage in
20 illegal or unethical activity within the California market
21 system.
22 I did not write any of the ISO protocols. While
23 I reviewed and made suggestions about limited sections of the PX
24 protocols, I did not write those either.
25 I did not write any of the software code that
26 implemented the final market rules.
27 I am not a computer systems engineer.
28 I know of no proprietary or confidential
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01 information regarding the operation of the markets to which I
02 had access before or during the time in which I was engaged in

03 marketing efforts.

04 I brought problems in the public protocols to the
05 ISO's and PX's attention, and they fixed several of those
06 problems prior to the opening of the deregulated energy market
07 on April 1st, 1998.

08 I began working for Perot Systems as an associate
09 in May of 1995, and remained employed by Perot Systems until
10 January 2001. Prior to joining Perot Systems, I was employed as
11 an energy consultant with two other companies. While employed
12 by those companies, I worked on a variety of projects for energy
13 companies, including Pacific Gas and Electric, Southern
14 California Edison, and San Diego Gas and Electric.

15 I was hired by Perot Systems to provide
16 consulting to clients on energy market matters. My initial
17 assignment with Perot Systems was with Southern California
18 Edison, where I provided advice on developing a contract
19 management system. I reviewed various contracts and performed a
20 cost-benefit analysis of the proposed contract management
21 system.

22 After completing my work on that project, I began
23 a consulting assignment with the three investor-owned
24 utilities -- Pacific Gas and Electric, Southern California
25 Edison, and San Diego Gas and Electric -- which had joined
26 together to create California's deregulated energy market. I
27 was engaged to provide advice to a sub-team that was tasked with
28 developing a congestion management system for the energy

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01 markets.

02 Congestion management, as some of you may know,
03 is simply managing the transmission of electricity across a grid
04 that has limits on the energy flows that various elements can
05 support. It is controlling how much electricity can flow
06 through the wires that make up the grid that get power from one
07 point to another.

08 I worked on this sub-team for the IOUs, and later
09 for the Western Power Exchange, WEPEX, after its formation by
10 the IOUs.

11 In March of 1997, I was assigned to the Perot
12 Systems team that was part of the ISO Alliance with ABB. Perot
13 Systems was the project manager and computer systems
14 integrator. ABB created the ISO's computer systems. My job was
15 to explain the formulation of the congestion management problem
16 that resulted from the public WEPEX process. I explained this
17 formulation, which was described in the protocols, to the ABB
18 subcontractor that was to develop the algorithms and the
19 computer codes to implement the congestion management process.

20 I have also read other public protocols
21 promulgated by the ISO so that I could provide advice to the
22 computer programmers as to how the related elements of the
23 market were supposed to work. ABB programmers would then create
24 the ISO's computer systems programs that implemented those
25 market protocols.

26 As is mentioned in a November 17th, 1997 e-mail
27 that I wrote and voluntarily turned over to the committee, and
28 which Mr. Perot referenced this morning, I had no knowledge of

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01 the inner workings of any of the code, including congestion
02 management. I did not even know how to start their computer
03 systems.

04 My only involvement with the ISO's computer
05 systems was to test one portion of their congestion management
06 software, again referring to the November 17th, 1997 e-mail, to
07 verify that it works as published.

08 I also participated in open meetings held by the

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09 ISO and the ISO Alliance where the protocols and their progress
10 in their implementation were discussed with market participants
11 who would make their own suggestions.

12 Perot Systems was not responsible for drafting
13 the ISO protocols, and it was not within my job description to
14 do so.

15 I worked on the Perot Systems ISO Alliance team
16 until September 1997, when I left the ISO Alliance team to
17 provide part-time assistance to the PX. I was asked by Jim
18 Kritikson, then Director of Scheduling for the Power Exchange,
19 to take an assignment to assist the PX in reviewing the ISO and
20 PX public protocols. Mr. Kritikson asked me to advise the PX on
21 ways to ensure that their market process would work with the
22 ISO's systems.

23 I continued providing consulting services to the
24 PX, which eventually turned into a full-time assignment until I
25 left Perot Systems in January 2001.

26 As I have mentioned, one of my jobs was to review
27 the public protocols on congestion management. I also reviewed
28 the ISO and PX protocols because I believed it was important to

0150 know how the whole energy market system was supposed to work.

02 In late April 1997, I discovered a problem in the
03 ISO's public protocols dealing with the real-time market. I
04 immediately notified the ABB and ISO personnel developing the
05 software to implement the real-time market of this problem, and
06 I gave them a memo in the beginning of May 1997.

07 I was told by the ABB and ISO personnel that they
08 were well aware of the problem, that a method of correcting the
09 problem had been discussed during the WEPEX process, and that it
10 would be fixed. Months later, however I reviewed a new version
11 of the ISO's public protocols, promulgated on October 31st,
12 1997, and I discovered that this problem with the real-time
13 markets had in fact not been corrected.

14 By then, I was providing consulting services to
15 the PX, so I immediately informed Jim Kritikson of the PX about
16 the problem. I devised an example to show the seriousness of
17 the problem. In the example, I showed how one large generator
18 could cause the price in the real-time market to spike to any
19 level that it desired.

20 I presented this example to Mr. Kritikson and
21 also to the President and to the CEO of the PX. They told me
22 to tell the ISO, which I did as is reflected in a November 7th,
23 1997 presentation I gave to the ISO.

24 Because the ISO acted quickly in revising their
25 public protocols before market started on April 1st, 1998, a
26 large generator could not cause a price spike as described in my
27 example.

28 A few months later, in the beginning of 1998, I

0151 was again reviewing the public protocols, this time for the PX.
02 I discovered another problem this time with the PX's zonal price
03 call calculation protocol. I'll refer to this problem as the
04 negative price problem. This problem, if it had gone unfixed,
05 could have enabled even a small participant to cause the price
06 of electricity in California to spike to \$250 per megawatt hour,
07 the then existing price cap on the usage charge for congested
08 transmission lines, by intentionally overloading a transmission
09 line.

10 There are other elements to this problem, but
11 essentially it was due to the fact that the PX's public
12 protocols stated that a price within a zone or at an intertie
13 scheduling point could not go below zero dollars per megawatt
14 hour. To eliminate the problem, the PX needed to allow for

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15 negative prices so that neither a small nor a large generator
16 could cause the price to spike to 250 per megawatt hour.

17 I alerted the PX to this problem when I
18 discovered it. The PX presented this to its board, and the
19 board instructed the PX to discuss methods of implementing
20 negative prices with its market participants.

21 On or around March 23rd, 1998, at an open
22 meeting, the PX informed market participants about the
23 possibility of negative energy prices in the PX through a
24 presentation entitled, "Protecting Yourself in the Congestion
25 Market: Adjustment Bids."

26 In fact, at a meeting on or around March 23rd,
27 1998, Mr. Kritikson and I gave the example that appears in the
28 44-page document to PX market participants to explain why

0152 01 negative prices were needed and a zero price floor could not be
02 enforced.

03 I picked the Silver Peak intertie, a transmission
04 line between two zones, to explain this problem because out of
05 all the interties, and all the interzonal paths, Silver Peak had
06 the smallest capacity, and thus, was an obvious location for
07 congestion, as anyone could see. Choosing Silver Peak for my
08 example made it simple to illustrate that even a very small
09 participant could create congestion and cause the negative price
10 problem.

11 Ultimately, as the ISO did, the PX acted and
12 fixed this problem before the markets opened on April 1st,
13 1998.

14 I have found other problems in the public
15 protocols, and I've brought them to the ISO's and PX's
16 attention. I specifically mentioned the real-time market and
17 the negative price problem, as they are the ones I placed in the
18 44-page document.

19 But before I address this document, however,
20 there are other foundational matters that will help this
21 committee understand the 44-page document. That 44-page
22 document stems from marketing efforts in which I and other Perot
23 Systems employees, and Dr. Backus of Policy Assessment
24 Corporation engaged. I am not certain who introduced Dr. Backus
25 to Perot Systems, but my colleagues and I discussed with
26 Dr. Backus how we might be able to work together. Essentially,
27 we wanted to be able to educate market participants, as the ISO
28 and PX were doing, and provide them with a strategic decision-

0153 01 making process that would enable them to participate effectively
02 in the deregulated market.

03 Strategic decision-making in the context of a
04 free market, or on a battlefield, or in a court room, on a
05 football field, or at a State Capitol like this, can also be
06 referred to as gaming. When I use the word gaming or game, I am
07 referring to a strategic decision-making process whereby you
08 play out different strategies to determine the risks and --

09 CHAIRMAN DUNN: No, finish the sentence,
10 Mr. Gribik.

11 DR. GRIBIK: -- to determine the risks and
12 benefits each strategy has in store, given the range of
13 strategies that other participants may employ.

14 CHAIRMAN DUNN: Now I'll interrupt.

15 Senator Peace.

16 SENATOR PEACE: I think it's interesting, and I
17 think it's an accurate illusion to warfare, football games, and
18 whatnot. And it goes to the heart of this contention that the
19 word game is a neutral, nonpejorative term.

20 What is striking is the references made by

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21 Mr. Backus to his predisposition not to work with, in this case,
22 Edison employees, but he refers to utility employees in general,
23 and would rather work with you and others.

24 I think you were here earlier, and you heard my
25 questioning of Mr. Perot. I couldn't help but notice, as a guy
26 who, in my business, what we did all across the country is
27 highlight films for college football teams, all over the
28 country.

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01 And the Texans also tended to be the most
02 successful in the football field, but we also learned over a
03 number of years that they were more successful because they
04 cheated. They recruited illegally. Their athletes tended early
05 on to get involved in steroids and other drug use before the
06 country as a whole.

07 I just wonder if you'd like to comment, if you
08 can explain to me why the Texans seem to have been so much more
09 effective in these games?

10 DR. GRIBIK: I can't say anything about Texans.
11 I have only visited Texas a couple of times.

12 For your information --

13 SENATOR PEACE: A lot of the Texas players came
14 from California, mind you.

15 DR. GRIBIK: But for your information, I also
16 have a utility background and worked for ten years at Pacific
17 Gas and Electric. I, too, am concerned about reliability, and I
18 was concerned about some of the reliability impacts of the
19 protocols that were being developed.

20 If I may continue with my statement?

21 CHAIRMAN DUNN: Please.

22 DR. GRIBIK: Of course, these strategies must
23 comply with certain parameters or rules. I and others at Perot
24 Systems knew the rules of the California energy markets because
25 we were familiar with the public protocols and had considered
26 how the various components that make up the market would
27 interact.

28

We also knew that since it was a market that

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01 deviated from simple economic theory, market participants would
02 need to make strategic decisions about how they would operate
03 within the market. In other words, participants needed to run
04 multiple scenarios to decide where they could derive a benefit
05 in the form of acceptable profits on one hand, and avoid risks
06 on the other. That is, avoid the possibility of unacceptable
07 costs that could destroy a market participant.

08 Because the energy markets are so complex, a
09 computer gaming program would run multiple scenarios based on
10 the public protocols, the rules and parameters that govern the
11 scenarios, was the best opposition in our opinion.

12 It is my understanding that Dr. Backus had such a
13 program. As such, we marketed what I'll refer to as a package,
14 that coupled our knowledge of the public protocols with a
15 decision -- strategic decision-making process.

16 We attempted to market in package to Southern
17 California Edison, Pacific Gas and Electric, and San Diego Gas
18 and Electric, and Enron. I have attended a meeting at Southern
19 California Edison, but I did not set up this meeting, did not
20 give a presentation there, or write or create any document that
21 was given. In fact, I did not think Edison was a very good
22 candidate to which to market our package, because Edison had
23 been required to sell off a very large portion of its
24 generation, and regulations barred Edison from entering into new
25 long-term contracts. I thought that this severely weakened its
26 competitive position. In any event, we sold nothing to Southern

27 California Edison.

28 It is my understanding that Dr. Backus made a

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01 presentation to PG&E, but I have no first-hand knowledge of
02 this. I do not recall preparing anything that was used in any
03 meeting with PG&E, nor participating in any meeting or
04 presentation at PG&E.

05 The next meeting in which I did participate, and
06 for which I did prepare a document, was at San Diego Gas and
07 Electric. In fact, I wrote the Power Point presentation that
08 Perot Systems released in its June 6th, 2002 8K filing. In that
09 presentation, I discussed the California energy market structure
10 and the gaming process that a participant would need to employ
11 to make the strategic decisions about participating in this
12 market.

13 CHAIRMAN DUNN: Let me interrupt.

14 You defined as "I wrote" the Power Point document
15 Perot Systems released in its June 6, 2002 8K filing.

16 Is that the same one as we refer to as the

17 44-page?

18 DR. GRIBIK: No. This is the one that we made --
19 the first presentation I wrote to give to San Diego.

20 CHAIRMAN DUNN: I just wanted to make sure that
21 was clear. Thank you.

22 DR. GRIBIK: I also used the real-time market
23 problem about which I had alerted the ISO in May of '97 as an
24 example of a problem that had existed in the public protocols as
25 of early '97. That problem would have presented a risk to a
26 market participant if the protocol had been finalized as it
27 existed in early '97.

28 The example was put in the presentation to show

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01 that it is important to make strategic decisions and to be aware
02 of risks, such as the example of this risk that would have
03 existed had ISO had not changed its public protocols before it
04 opened its markets on April 1st, 1998.

05 It later came to my attention that someone at San
06 Diego Gas and Electric misunderstood some of the things I said
07 in the presentation and informed the ISO that we were talking
08 about proprietary information. That is not the case. As I
09 mentioned earlier, I did not have any access to ISO source
10 codes. I did not have access to any proprietary information.
11 All I had was access to and knowledge of the public protocols.

12 When I refer to a system, as I did in that
13 presentation and elsewhere, I mean a market system that is
14 composed of numerous component parts. Those component parts, if
15 not properly fitted and designed, may lead to increased
16 volatility, risk, opportunity for profit, and reduced
17 efficiency. These are the types of gaps or holes that I
18 referred to in the presentations, documents, and e-mails. I
19 never used the terms "gaps" or "holes" to mean confidential ISO
20 information or some secret deficiencies in a computer system.

21 I was not privy to any of the conversations that
22 subsequently took place between Perot Systems and the ISO about
23 the complaint from San Diego Gas and Electric. I was told by
24 someone at Perot Systems about them, but that we could continue
25 our marketing to market our package. However, we needed to make
26 some changes.

27 CHAIRMAN DUNN: Mr. Gribik, I want to insert a
28 quick question.

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01 Who was it at Perot Systems that told you this?

02 DR. GRIBIK: I'm not sure. I would be
03 speculating. It would have been one of my superiors.

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04 CHAIRMAN DUNN: If we had to narrow the universe,
05 who would it be most likely, even if that's one, two, or three
06 individuals?
07 DR. GRIBIK: Well, if I'm not sure, I hate to put
08 somebody's name out if I can't --
09 CHAIRMAN DUNN: Mr. Gribik, it wasn't the
10 receptionist. Who is the universe of --
11 MR. ARONICA: Senator, it's clear he's going to
12 be speculating?
13 CHAIRMAN DUNN: I understand that.
14 DR. GRIBIK: If you want me to speculate, I would
15 say it was probably either Hemant Lall or Ed Smith.
16 CHAIRMAN DUNN: Thank you.
17 DR. GRIBIK: I just want to make sure I'm not
18 getting somebody in trouble by my wild speculation.
19 CHAIRMAN DUNN: We're not going to pin you down.
20 You said that you didn't recall, but we're just trying to figure
21 out the most likely individuals that would have done that.
22 DR. GRIBIK: Those would be the likely
23 individuals.
24 However, we needed to make some changes. As
25 such, we added a disclaimer. We were clear that we were not
26 offering any proprietary information, and that we were
27 discussing the market system as based on public protocols, not a
28 computer system.
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01 As such, I modified the presentation to be more
02 explicit about the fact that I was only referring to the market
03 system based on public protocols.
04 A meeting with Enron in Portland, Oregon was set
05 for January 13th, '98. This meeting, however, did not occur due
06 to a severe snow storm that prevented everyone from being able
07 to attend.
08 I did not participate in any subsequent meeting
09 with Enron. I never made a presentation to Enron. And to my
10 knowledge, no one from Perot Systems ever participated in a
11 meeting at Enron.
12 CHAIRMAN DUNN: I'm sorry to interrupt again.
13 To your knowledge --
14 DR. GRIBIK: To my knowledge.
15 CHAIRMAN DUNN: No, no. Let me finish the
16 question.
17 Would you include within your definition of "no
18 one from Perot Systems" to include Mr. Backus in that statement
19 that "no one from Perot Systems ever participated in a meeting
20 at Enron?"
21 DR. GRIBIK: No. I don't know what Dr. Backus
22 did.
23 CHAIRMAN DUNN: I'm not throwing a curve ball at
24 you. I'm just trying to find out.
25 He would not be embraced within your comments
26 here?
27 DR. GRIBIK: He was not a Perot Systems person,
28 and we only had an informal arrangement, as far as I knew, to
0160 look at opportunities.
01 CHAIRMAN DUNN: I just want to clarify if he was
02 being embraced within this, okay.
03 DR. GRIBIK: No.
04 The last meeting in which I participated was not
05 a marketing presentation at all but an educational seminar at
06 Houston Industries, now Reliant Energy. I gave a five-hour
07 seminar based on a 115-page presentation that I voluntarily
08 turned over to this committee on June 18th, 2002.

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Now, turning again to the 44-page document, this history provides the background for the 44-page document that Reliant turned over to this committee. The facts surrounding this document are, as we informed this committee by letter on June 18, 2002, I wrote the 44-page document. I created it after the markets opened on April 1998 in case I or someone else at Perot Systems would need such a presentation for possible future marketing efforts.

I have no recollection of giving this document to anyone outside Perot Systems. It was not part of a presentation to anyone, which is obvious since it is missing a coverpage and the disclosure that we told the ISO we would put in our marketing presentations.

The document is not a blueprint for any type of illegal trading activity. All of the examples I identified in the document were problems that I discovered while reviewing the public protocols, about which I alerted the ISO and the PX, and that the ISO and the PX fixed before the markets opened on April 1st, 1998. Again, this is evident from the obvious past tense

language throughout the document.

The problems about what I alerted the ISO and PX were discussed in open meetings with market participants, and in documents, and other presentations, such as the November 27th, 1997 Harry Singh memo, and in meetings related to the May 23rd, 1998 PX presentation titled, "Protecting Yourself in the Congestion Market: Adjustment Bids."

Finally, I have no idea how the document made it into Reliant Energy's files.

Mr. Chairman and members of the committee, I too am a California resident and have paid more for my electricity and suffered the same inconveniences that other California residents have encountered. I can assure you, however, and the facts show, that neither my nor Perot Systems' work contributed in any way, shape, or form to increased energy prices, brown outs, or other aspects of the crisis. I did not engage in any improper activity that conflicted with my obligations to the ISO and PX. I did not expose any proprietary information because I did not have access to any.

I simply read the public protocols that were available to everyone. And where I saw a problem that I thought should be changed in the public protocols, I brought it to the attention of the ISO and PX for them to fix.

Thank you for the opportunity to make a statement. I will do my best to answer any questions you may have.

CHAIRMAN DUNN: Unless there is some immediate need to ask Mr. Gribik questions, you may indeed, Senator Bowen.

SENATOR BOWEN: Actually, going through some of the documents that are in the blue pages.

CHAIRMAN DUNN: Referring to Number 31, the one that was down there.

SENATOR BOWEN: Tab 31, one of the things that's in here, of course, is the 44-page --

MR. ARONICA: Excuse me, Senator. Tab 31?

SENATOR BOWEN: It's all the way in the back of the book.

I was specifically looking at the document that's Bates stamped 10454.

MR. ARONICA: I've got it.

SENATOR BOWEN: It's the page after that, 10458, right after that one in the book.

CHAIRMAN DUNN: It's tough to read up on the

16 screen.
 17 SENATOR BOWEN: That's not it, 10488, I'm sorry.
 18 You discussed several Alliance models that would
 19 meet Semptra's requirements. One of them, the second one, I
 20 thought was quite interesting,
 21 "Exclusive Semptra Alliance
 22 limited to very specific
 23 vertical markets, and does not
 24 include 'Bush states.'"
 25 Would someone like to explain to me what that
 26 means?
 27 DR. GRIBIK: I have no idea. I don't recall ever
 28 having seen this. In fact --
 0163
 01 SENATOR PEACE: I thought you wrote this.
 02 DR. GRIBIK: No, I did not. This is not the
 03 44-pager, and this is not the presentation to Semptra from
 04 October of '97.
 05 This one seemed to be dated November 2000.
 06 SENATOR BOWEN: Presumably, if one were
 07 discussing "Bush states," one would have needed to wait until
 08 after November of 2000.
 09 DR. GRIBIK: I would assume. So I have --
 10 SENATOR BOWEN: What's the relationship -- I note
 11 at the bottom of this page it says "Perot" and "Arthur D.
 12 Little."
 13 What role does Arthur D. Little play in this?
 14 Who's likely to know what this means?
 15 DR. GRIBIK: I didn't know we had a deal with
 16 Arthur D. Little.
 17 SENATOR BOWEN: To your knowledge, who is Arthur
 18 D. Little, and what does he do?
 19 DR. GRIBIK: Arthur D. Little, I think, is
 20 bankrupt now, so I'm not sure they still exist. But they were a
 21 technology consulting firm. They provided consulting services.
 22 They provided technology development. They did things with food
 23 production, machinery design. They covered a wide range of
 24 consulting opportunities.
 25 SENATOR BOWEN: So, you don't know who the "we"
 26 in the, "We discussed several alliance models" at the top of
 27 this page might have been?
 28 DR. GRIBIK: No. I don't recall anything about
 0164
 01 this.
 02 SENATOR BOWEN: You know, we've had some concern
 03 that California has been -- I think I'll leave it alone. It's
 04 obvious.
 05 SENATOR PEACE: This is dated November 2000.
 06 It's Bush [sic] and Arthur D. Little presenting something to
 07 Semptra, which at this point in time is right --
 08 SENATOR BOWEN: It's Perot and Arthur D. Little.
 09 SENATOR PEACE: What did I say?
 10 SENATOR BOWEN: You said Bush and Arthur D.
 11 Little.
 12 SENATOR PEACE: And it's right on the heels of
 13 the summer 2000 experience in San Diego, where Semptra's utility
 14 has been severely criticized for purposefully leaving their
 15 market open to exposure.
 16 Now we see a document in which there is either
 17 somebody at Perot and/or Arthur D. Little thinking that Semptra
 18 would have an interest in having a strategy differentiated
 19 between "Bush states", or Semptra requested that a strategy be
 20 delivered to them to differentiate in "Bush states."
 21 Unless it's a reference to some sort of

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22 Australian dish, or something, I can only conclude that this
23 would be an interest in making sure that the kind of havoc that
24 was wreaked on California would not see itself repeated in a
25 state that Bush cared about.

26 DR. GRIBIK: I have no idea about this
27 presentation. I can't speculate. I didn't know we were doing
28 anything with Arthur D. Little.

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01 SENATOR PEACE: Do you have any other -- I know
02 Mr. Perot made a point that sometimes the terminology that you
03 guys have is somewhat exotic and we don't understand it.

04 Is there some technological term of "Bush state"
05 that might be going over our heads?

06 DR. GRIBIK: Senator, I have no idea what they're
07 referring to. I don't know if they're referring to President
08 Bush, I don't know if they're referring to states with a lot of
09 bushes.

10 SENATOR PEACE: There's no "C" in it, so it's
11 certainly not the beer.

12 DR. GRIBIK: Well, I have no idea what this
13 refers to, no idea.

14 SENATOR BOWEN: Those would be in the midwest, I
15 think.

16 Let me go on to another document that caused on
17 to have some questions. Obviously, this is a document where
18 there are more questions than answers.

19 A little further back in these blue tabs, the
20 Bates stamp number is 10786, and 10798 follows it immediately in
21 the book. "California Market Structure."

22 Then the next page in your book is, "Perot
23 Systems Capabilities."

24 One of the discussions, obviously, that we're
25 having is about the extent to which Perot Systems took advantage
26 of not just the public protocols, but the information about how
27 those protocols might actually function.

28 I take it that this is a marketing document?

0166

01 DR. GRIBIK: Yes, it was a marketing document.

02 SENATOR BOWEN: And it says,
03 "We know the actual systems
04 We are part of ISO"

05 Let's go on to 10798,

06 "We are part of ISO Alliance
07 building the ISO system "

08 That's part of what Perot Systems is advertising.

09 And it says,

10 "We know the 'warts' as well as
11 the theory."

12 DR. GRIBIK: Okay. Well, what I can tell you is
13 that I know nothing about the computer systems.

14 Again, what I was referring to was the market
15 systems, and really how they interact. One of my backgrounds is
16 being a systems engineer, a systems analyst. So, I'm used to
17 breaking this down into small pieces and looking at how the
18 pieces interact to make a whole.

19 What I noticed in a lot of design work on the ISO
20 protocols, people broke it into small pieces and designed
21 pieces, made the pieces look pretty, that they thought the
22 pieces would work well, but they never were concerned about how
23 they all fit together to make an entire system. There were a
24 lot of elements to the California market like that.

25 And whenever I'm saying that we knew warts as
26 well as the theory, I knew simple Economics 101, the
27 supply/demand curve intersection, but what I was trying to tell

28 people is, that is not the case. We have a much more

0167 01 convoluted market structure. It's not a smooth placid market
02 structure. There are whorls and eddies, warts, if you will,
03 complexities.

04 For example, one of the major complexities that I
05 was very concerned about and brought to the ISO's attention, was
06 told basically, "Don't go there because we can't get this done
07 before the start of the market," was that the ISO and PX markets
08 for the day-ahead process were run as 24 independent hourly
09 markets.

10 Whenever the WEPEX process was going on, we had
11 discussed how you can't really do it that way if you expect to
12 get feasible schedules out. For example, if I have a generator,
13 and I'm bidding into that day-ahead market, since each hour is
14 independent, they're going to schedule my generator in each
15 hour. At the end of the day, when I look at my schedule, I may
16 not be able to operate according to the schedule they gave me.
17 I just cannot do it. They've given me a schedule where I'm
18 moving quicker from hour to hour, changing my output from hour
19 to hour quicker than I possibly can. It's physically
20 infeasible.

21 That creates risk to the system. That creates
22 risk to the participant who's bidding into the system.

23 I thought we should address that and fix it, but
24 was told we -- that is a fundamental change to the market. If
25 we tried to do that, 1/1/98 is out. We're probably talking
26 1/1/99.

27 SENATOR BOWEN: Let me ask you a question. I
28 understand now.

0168 01 But are you saying that that's an example of the
02 kind of issue that you brought to the attention of the ISO?

03 DR. GRIBIK: I brought it to one of the very
04 early meetings at the ISO Alliance. I pointed out to them that
05 in the WEPEX process, when we were talking about the process of
06 congestion management, we had explicitly discussed that the
07 congestion management process could look at coupling between
08 hours.

09 SENATOR BOWEN: I don't need the detail of it.
10 My question really is this. If the ISO's
11 response to this particular problem was, "We don't have time to
12 deal with that and to open the market in a timely fashion," what
13 ethical obligations did Perot Systems have when it came to
14 marketing that, using that information to encourage participants
15 to exploit that, what you viewed as a flaw in the market
16 structure?

17 DR. GRIBIK: I wasn't talking about exploiting
18 it. I view this as a significant risk which was being layered
19 onto market participants.

20 SENATOR BOWEN: But I'm asking you, when you have
21 a company who's employed to write the computer system, the
22 software, for these markets, and as a part of that, they
23 discover flaws in the components that make up the markets, as
24 you said, what ethical obligation does that contractor have,
25 then, when it comes to marketing the knowledge of those flaws to
26 market participants?

27 DR. GRIBIK: This was not something that came out
28 of the computer systems. The public protocols --

0169 01 SENATOR BOWEN: I understand that, but in order
02 to write the computer system, that's a piece of analytical work
03 that you have to do; correct?

04 DR. GRIBIK: No, no. That was right on the

05 surface. The protocol said 24 independent hourly markets.
06 Anyone who read the protocols would see that.

07 What we were saying is, whenever you're going sit
08 down and bid into this market, you have to take that into
09 account and try to bid to alleviate that risk. It was something
10 that's on the surface.

11 SENATOR BOWEN: I don't think you're
12 understanding my question.

13 Perot Systems in this is not an outsider to the
14 system. Perot Systems is an insider. It has a contract with
15 the ISO and the Power Exchange to do certain work.

16 And my question is, what ethical obligations when
17 it comes to outside marketing do those contracts create in your
18 view?

19 DR. GRIBIK: In my view, we were dealing with the
20 public protocols, public information.

21 SENATOR BOWEN: So you had no ethical -- there
22 were no concerns about what information you might use? Even
23 though you were a contractor, you felt that Perot Systems was
24 free to --

25 DR. GRIBIK: Again, it was public information.
26 And those things that I saw that I thought were problems, I
27 immediately brought to the ISO's and PX's attention.

28 SENATOR BOWEN: There are a number of places in

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01 what Mr. Drivon went through this morning that gives me a little
02 different impression. Let me see if I tabbed enough of them to
03 be able to go back. Let me start with Document 25, Tab 25.

04 This is the very first page, 1108. It's the
05 first full paragraph. This is discussing you:

06 "The fact that Smith and Gribik
07 may not be engaged on a
08 day-to-day basis with the work
09 to be performed under the
10 contract does not mean that they
11 cannot maintain contact with and
12 receive awareness and
13 information from those that are
14 engaged in day-to-day work
15 (thus gaining access to
16 confidential information)."

17 Do you think that's an inaccurate assessment of
18 the problem?

19 DR. GRIBIK: I never got access to the
20 confidential ISO information, so --

21 SENATOR BOWEN: Did you have contact with those
22 who were engaged in day-to-day work?

23 DR. GRIBIK: I had contact with people in Perot
24 Systems, yes. But never requested any information from them as
25 to --

26 SENATOR BOWEN: Let's go to I think it's Tab 18,
27 the Bates stamp is 558. This is subparen 2). This is a memo
28 from an Alan Suding.

0171

01 Do you know Alan Suding?

02 DR. GRIBIK: Yes, I do.

03 SENATOR BOWEN: Who is he?

04 DR. GRIBIK: He was a Perot Systems employee
05 working on the Edison account.

06 SENATOR BOWEN: And can you tell me who the
07 people at top of this list are, the distribution list? I am not
08 familiar with all of the gamers.

09 DR. GRIBIK: Gary Castleberry, Ed Smith, Hemant
10 Lall, were all Perot Systems people. I believe Castleberry and

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11 Smith were executives. Dariush is sitting right here, and
12 Shashi Pandey was a Perot Systems associate working on the
13 Edison account.
14 SENATOR BOWEN: The memo talks a little bit about
15 this meeting between Edison and Perot Systems and Backus.
16 How is it that LADWP is in this loop? What's
17 their relationship to this?
18 DR. GRIBIK: Back when Perot Systems first got
19 some accounts in Southern California, they set up an e-mail
20 server at the -- I forget where exactly they set it up -- but
21 there were two accounts, LADWP and Edison. And they set up an
22 e-mail server which they referred to as PSC-LADWP. It was just
23 our e-mail server for Southern California people.
24 SENATOR BOWEN: Why were you setting up an e-mail
25 server at LADWP?
26 DR. GRIBIK: I don't know if it was set up there
27 or somewhere else, but that was the name of the e-mail server.
28 SENATOR BOWEN: But Alan Suding was an LADWP
0172 employee?
01 DR. GRIBIK: No, no. We had two accounts.
02 Alan Suding was a Perot Systems employee. We had
03 two accounts in Southern California: one at LADWP, and one at
04 Southern California Edison. They set up an e-mail server to
05 handle both accounts, and they used LADWP as the name of the
06 e-mail server.
07 SENATOR BOWEN: I'd sure be curious to find out
08 how that happened.
09 Let's go down to Number 2. This is a report from
10 Mr. Suding, Perot Systems, on what Mr. Backus believes need to
11 happen on this project. And Number 2 says, "Paul's insights,"
12 I presume that's you?
13 DR. GRIBIK: Yes.
14 SENATOR BOWEN: [Reading text]
15 "Paul's insights (and model)
16 into how the ISO works, where
17 the holes are in the ISO
18 process, which ones should be
19 plugged, which should be used,
20 etc."
21 DR. GRIBIK: Okay.
22 SENATOR BOWEN: What's the reference here? Can
23 you explain this? I know it's not your work. You didn't write
24 this.
25 DR. GRIBIK: I didn't write it.
26 All I know is that I had studied how the various
27 pieces of the model worked together so I had a good feel for how
0173 the California market was designed to work. And I found that a
01 very interesting area.
02 SENATOR BOWEN: And you were working for Perot
03 Systems, which was hired to write the software to do with this,
04 but you didn't feel that there was -- what was your ethical
05 obligation to bring these --
06 DR. GRIBIK: I think that was wrong. We were not
07 hired to write the software, to implement the protocols. ABB
08 wrote the software that implemented the protocols.
09 Perot Systems was hired to basically make sure
10 that the pieces of software could talk to each other, software
11 integration. And that's something --
12 SENATOR BOWEN: So, Perot Systems was in an
13 unique position to look at the components of the market so they
14 could make sure they could function together.
15 DR. GRIBIK: No, well, I can't answer this,

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17 because I'm not a software integration person. So, I really
18 don't know that much about the techniques.
19 It was my understanding that Perot Systems had no
20 access to the source code. That was my understanding. I
21 believe all they had was --
22 SENATOR BOWEN: How is that possible for a
23 systems integrator not to have access to source code?
24 DR. GRIBIK: Well, source code is the actual
25 computer language which you can sit down and read and
26 understand.
27 SENATOR BOWEN: I understand.
28 The question then is, who cares if you had access
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01 to the source code? If you knew how it worked, who cares.
02 DR. GRIBIK: Pardon? Could you repeat that?
03 SENATOR BOWEN: What difference does it make
04 whether Perot Systems had access to the source code or to
05 information about how the source code worked, what it did?
06 DR. GRIBIK: As far as I know, our knowledge of
07 how the source code worked was basically the description in the
08 public protocols. That's my understanding of what we had.
09 SENATOR BOWEN: That's inconsistent with the role
10 of a systems integrator, whose job it is to make sure that the
11 parts of the computer system --
12 DR. GRIBIK: No, no. I don't think it is,
13 because what we had -- again, I'm not a systems integrator, so I
14 may be mistaken, but my understanding is, there was large data
15 base, and there was a public data dictionary saying what was in
16 the data base, so that people could put data in and take data
17 out. And that there were public applications interface
18 protocols that specifies what data goes into a program, what
19 data comes out.
20 SENATOR PEACE: You've given that argument
21 repeatedly. Let's go back. You kind of skipped over it.
22 Senator Bowen read you this, the line in the
23 e-mail,
24 "Paul's insights ... into how the
25 ISO works, where are the holes in
26 the ISO process, which ones should
27 be plugged, which ones should be
28 used, etc."
0175
01 And then you kind of dismissed this by saying you
02 didn't write this; right?
03 DR. GRIBIK: I did not write this.
04 SENATOR PEACE: But you did write the e-mail in
05 response; didn't you?
06 DR. GRIBIK: Yes.
07 SENATOR PEACE: And it says,
08 "I think that items 2-5 are very
09 interesting areas."
10 You actually specifically said it, so you
11 obviously read Item 2.
12 DR. GRIBIK: I read it.
13 SENATOR PEACE: Let's see what you said about it.
14 You said,
15 "I've been talking to Dariush
16 and Ali about the gaming
17 opportunities that may exist in
18 the protocols. I think this
19 could be a good area to find
20 work, and George's abilities
21 enhance ours quite well."
22 So, you're advocating an alliance between Mr.

23 Backus and Perot Systems.
 24 "We should ask ourselves
 25 whether Edison is the best
 26 party to whom to sell such
 27 services. Will Edison be a
 28 winner in the new market? If
 0176 Edison will only be a marginally
 01 effective competitor, can we make
 02 big dollars by working with them?
 03 Is there another energy company
 04 that we should approach to sell
 05 these services?
 06 "Overall, I think that this
 07 is the right area in which we
 08 should try to work. Our
 09 experience in working on the ISO
 10 systems will give us a lot of
 11 info on gaming opportunities."
 12 Do you understand what the author of this --
 13 DR. GRIBIK: Yes, I was saying that I thought
 14 that looking at the protocols, studying how they worked, looking
 15 for very strategic opportunities implicit within them,
 16 simulating them, studying them.
 17 SENATOR PEACE: And you were skeptical about
 18 working with Edison; weren't you?
 19 DR. GRIBIK: I was.
 20 SENATOR PEACE: Because you also knew enough
 21 about the system to know that the nonutility competitors had an
 22 inherent advantage; didn't you?
 23 DR. GRIBIK: No, Senator.
 24 SENATOR PEACE: In your other --
 25 DR. GRIBIK: No. What I recommended, I thought
 26 that PG&E was a much better candidate because it was my
 27 understanding that PG&E was retaining its hydro system, which I
 0177 thought was a very, very --
 02 SENATOR PEACE: An extreme advantage in this,
 03 particularly since PG&E was much more aggressive than Edison
 04 with respect to attempting to, as much as possible, move all
 05 their work product to their nonregulated activities; right?
 06 DR. GRIBIK: I did not know that. All I knew --
 07 no, I did not know what PG&E was doing with its -- with Edison.
 08 What I was very concerned about was, I saw that Edison sold off
 09 almost all of its fossil fired generation. I think they might
 10 have sold all of it, if I'm not mistaken. And that, I thought,
 11 made them a very -- what that exposed them is to, well, let me
 12 back up.
 13 They sold off all their fossil fired generation,
 14 and they were forbidden by regulation to enter into new
 15 long-term contracts. That threw them to buy significant blocks
 16 of energy on short-term markets, day-ahead markets, hour-ahead,
 17 real-time.
 18 SENATOR PEACE: And so, your product then would
 19 be more easily marketed to a company that had a broader --
 20 wasn't restricted by those --
 21 DR. GRIBIK: Well, what I thought was that
 22 Edison, because they were restricted from this, that would be
 23 similar to saying that Shell Oil or Exxon should buy all of its
 24 oil on the day-ahead market.
 25 I thought that the regulations were putting them
 26 in such a bad position that they were going to find it much more
 27 difficult.
 28 SENATOR PEACE: And so, the opportunity for the

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01 alliance of Perot and Backus to profit by working with a
02 company, if indeed you had to work exclusively, was probably
03 going to be better at a company other than Edison.

04 DR. GRIBIK: I thought that there were other
05 companies who were better candidates, such as PG&E.

06 CHAIRMAN DUNN: I want to actually, because we're
07 about to have a mutiny on our hands by our court reporter here,
08 we're going to have to take five minutes to give her a chance to
09 re-energize and put paper in. Give everybody a chance to use
10 the restroom. Five minutes' recess.

11 [Thereupon a brief recess
12 was taken.]

13 CHAIRMAN DUNN: Why don't we get everybody
14 settled in.

15 Reminder, if you have your cell phone on, turn
16 them off, or put them on vibrate. Or both you and your cell
17 phone will be asked to leave.

18 While we are settling in, I do have a quick
19 announcement to make. And that is, if there's an individual by
20 the name Janine English in the room, you left materials in the
21 restroom. They are with the Sergeant-at-arms there. Please
22 retrieve your materials.

23 Not seeing anything further, we're back to
24 Senator Peace.

25 SENATOR PEACE: Thank you, Mr. Chairman.

26 Mr. Gribik, I want to go back to, again, your
27 response to this e-mail. You make specific reference in your
28 e-mail response to items two through five. So, I have to

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01 believe that, contemporaneously, you read item two.

02 DR. GRIBIK: Yes.

03 SENATOR PEACE: And the implication of your
04 response today is that disagree with the characterization of
05 your knowledge in item two.

06 Did I misunderstand what you're attempting to
07 communicate to us?

08 DR. GRIBIK: What I'm saying is that I thought,
09 studying the ISO protocols, looking at the strategic
10 opportunities within them was very interesting.

11 I was not responding in absolute detail to
12 everything. I was just giving --

13 SENATOR PEACE: But you didn't take -- you're
14 implying to us today that, well, this is overstating my level of
15 insider knowledge, if you will, and the ability for us to profit
16 off of that insider knowledge.

17 But you didn't take it upon yourself to
18 communicate that contemporaneously. You didn't say, "Oh, wait a
19 minute. I don't have that kind of knowledge for us to be able
20 to profit."

21 In fact, your subsequent e-mail, if we go two
22 pages back to 000560, you state,

23 "I have been looking at holes in
24 the protocols that may give rise
25 to gaming opportunities. I was
26 looking at this from a scheduling
27 coordinator's perspective.
28 However, even such gaming

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01 strategies may be of interest
02 to Edison so that they can be
03 alert to others trying to pick
04 their pockets."

05 MR. ARONICA: Senator, which one are you

06 referring to, please? What page?
 07 SENATOR PEACE: Two pages later. The very next
 08 page, 000560.
 09 Now, you stated that your reason for not being
 10 excited about Edison was because they had sold all their fossil
 11 fuel; is that right?
 12 DR. GRIBIK: Well, I was -- I thought they were
 13 coming into the markets very, very net short, and that that was
 14 a very risky position.
 15 SENATOR PEACE: This was 1997, and they hadn't
 16 sold anything at that point. The PUC merely had a requirement
 17 they sell 50 percent of their fossil fuel plants. You're right,
 18 they ended up selling more than that, I believe, but that wasn't
 19 the requirement. You couldn't possibly have known they were
 20 going to sell more.
 21 DR. GRIBIK: I could be confused on the time, but
 22 I did know they had to sell off a lot. And again, they had to
 23 sell off 50 percent of the fossil fuel --
 24 SENATOR PEACE: And so you thought they were more
 25 vulnerable. And I would accept that. I think you're right. I
 26 agree with that assessment.
 27 But your e-mail here specifically references
 28 scheduling coordinators. Now, who would that be? Just to help
 0181 those of us that don't have the --
 02 DR. GRIBIK: I think I might have misstated
 03 myself there a bit. What I was thinking about was generators,
 04 and I was thinking how a generator would bid into these markets.
 05 Specifically, we have -- in this market you have
 06 to bid a single energy price. But a generator has three costs
 07 associated with it: start up, no load, incremental energy. A
 08 generator could bid to sell energy; it could bid to sell
 09 regulation; spinning reserve; nonspinning reserve; replacement
 10 reserve.
 11 I was thinking in terms of a generator, how do
 12 you --
 13 SENATOR PEACE: Let me stop you there, and I
 14 apologize for interrupting you.
 15 That's the distinction I wanted to be able to --
 16 you were talking about you believe there was likely to be a
 17 better market opportunity for stand-alone generators,
 18 independent energy procedures, as opposed to the vertically
 19 integrated utilities; is that right?
 20 DR. GRIBIK: No, I wouldn't say that.
 21 What I was thinking about was, how would a
 22 generator bid into this market, because that was the first thing
 23 on my mind. And then, whenever I was looking at that, I
 24 realized that because of the way the market was structured,
 25 additional risk was placed on a generator bidding in, to make
 26 sure they could cover all of its costs. And because of that,
 27 there is likely to be a risk premium being --
 28 SENATOR PEACE: But in your testimony, you
 0182 made -- spent a great deal of time talking about how you
 01 identified holes and brought them to folk's attention.
 03 And yet, one of your colleagues makes reference
 04 to which holes should be plugged and which should be used, and
 05 you don't take that opportunity to object to that. In fact, you
 06 immediately go into discussing the fact that you've been giving
 07 a great deal of thought about how generators could make use of
 08 this information; don't you?
 09 DR. GRIBIK: No. What I'm talking about there,
 10 again, is given the market structure, how would I bid it.
 11 MR. ARONICA: Senator, let him have a chance to

12 finish his answer.
13 SENATOR PEACE: That's the great thing about
14 being a Legislature, not a court room.
15 He's answered the question to my satisfaction.
16 It isn't helpful to the time or anything to go beyond answering
17 the question. So, I will respectfully, Counselor, reserve the
18 right to determine when my question's been answered.
19 Your contention is, all of the information that
20 you were making use of was public information; correct? These
21 are public protocols?
22 DR. GRIBIK: Yes, they are.
23 SENATOR PEACE: In fact, were you familiar at the
24 time with PSC's presentations to FERC regarding similar
25 criticisms?
26 DR. GRIBIK: I'm not sure if I read their
27 presentations or not. I know a lot of people were commenting
28 about the markets, but I don't know --

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01 SENATOR PEACE: And you were here earlier today
02 when I asked Mr. Perot a similar line of questioning. From your
03 perspective, as one who was dealing in the markets, you feel
04 lots of people knew what you knew?
05 DR. GRIBIK: Yes. I felt that this -- this was
06 in the protocols. All it required was somebody to think about
07 it.
08 SENATOR PEACE: Was it believable that people at
09 FERC didn't know what you knew?
10 DR. GRIBIK: Well, I can't speculate on what FERC
11 knew.
12 SENATOR PEACE: You didn't share any of this
13 information with FERC?
14 MR. GRIBIK: I had no contacts with FERC. I had
15 contacts at the ISO.
16 SENATOR PEACE: But you believe people in the
17 industry all knew this information?
18 DR. GRIBIK: I believe people knew. I knew that
19 there were people out there who did not like the market design,
20 were advocating other designs. I knew there that that had been
21 discussed thoroughly.
22 I'm not sure the point of the question.
23 SENATOR PEACE: Thank you.
24 CHAIRMAN DUNN: Senator Bowen.
25 SENATOR BOWEN: Thank you.
26 There are still a couple of other places where I
27 have questions. Let's go to Tab 20.
28 DR. GRIBIK: That's 000856, Senator?

0184
01 SENATOR BOWEN: Yes.
02 I think this e-mail, hard to know where to start,
03 but it specifically -- it is an e-mail, I think -- deals with
04 the ISO's concerns about the conflicts. And we've looked at the
05 part of it that says,
06 "I have no knowledge of the
07 inner workings of any of the
08 code I don't even know how
09 to start their ... systems."
10 Although, as I've said to you, I don't know why
11 that's relevant. If you know what the software does, it doesn't
12 really matter if you know how code works.
13 DR. GRIBIK: Excuse me. I know what the protocol
14 requires the software to do, and that was all in the public.
15 SENATOR BOWEN: There was a document before the
16 break that I had tabbed that I'm looking for now that talks
17 about -- the document itself is not important particularly, but

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18 what it talks about is the fact that there were protocols that
19 were still not developed yet at the Power Exchange.
20 Here it is. It's Tab 14, "PSC Energy Deal Review
21 Document," 5 August 1997 version.
22 This has to do not with the ISO, but with the
23 Power Exchange system. Couple of things that -- I don't know
24 who the author of this document is. Do you know, Mr. Gribik?
25 DR. GRIBIK: I don't know.
26 CHAIRMAN DUNN: If I may insert and pose a
27 question.
28 I know we haven't heard from Mr. Shirmohammadi.
0185
01 Mr. Shirmohammadi, do you recognize that
02 document? Is that yours?
03 DR. SHIRMOHAMMADI: No, that's not mine, and I do
04 not recognize it.
05 SENATOR BOWEN: It has at the bottom of Bates
06 stamp Page 528, it says,
07 "NOTE: This paid involvement
08 also provides unique insight for
09 parlaying our 'Gaming' initiative
10 from our experience."
11 MR. ARONICA: Excuse me, Senator. I can't see
12 where you're reading.
13 SENATOR BOWEN: At the very bottom, there's a
14 parenthetical note.
15 MR. ARONICA: Oh, I see it. Thank you.
16 SENATOR BOWEN: Dealing again with -- and that
17 certainly creates the perception again that there's
18 information --
19 DR. GRIBIK: I really can't say what this is,
20 because I don't recall ever seeing this before these hearings.
21 So, I'm not sure who wrote it. I'm not sure what was in their
22 mind.
23 SENATOR BOWEN: It is a Perot Systems document,
24 though. It says "PSC" at the bottom of it.
25 MR. ARONICA: I don't believe that necessarily
26 means it's a Perot Systems document.
27 CHAIRMAN DUNN: It was produced to us by Perot
28 Systems.
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01 We haven't had any testimony as far as who
02 created it, how and under what circumstances, but it was
03 produced by Perot Systems.
04 SENATOR BOWEN: The thing that I found
05 interesting is actually on Page 532 of this same document, so
06 it's four pages back.
07 I presume this is a Perot System document, since
08 it says, "PSC Energy Deal Review Document," although I
09 suppose -- and it refers to the Power Exchange and the ISO as
10 being outside parties.
11 "Short term plan/resources
12 Approx 2 days a week of Paul
13 Gribik's time to engage in
14 thought leadership in
15 development of business rules &
16 market protocols for the PX."
17 My understanding of your testimony is that you
18 were just taking the already available protocols and evaluating
19 the extent to which they created warts, holes, gaps, and so
20 forth.
21 But from this document, it appears to me that it
22 was anticipated that you would actually help develop the market
23 rules and business protocols.

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24 Is this inaccurate?
25 DR. GRIBIK: I advised the PX on certain aspects
26 of their protocols. I didn't write the protocols.
27 One area -- one area alone -- actually two areas,
28 I believe, I gave them some advice. One was, they wanted to
0187 know how to take schedules that the ISO produced and the usage
01 charges that the ISO gave them, and how they -- how they should
02 decide to calculate zonal prices.
03 I gave them some advice. I didn't write --
04 SENATOR BOWEN: Mr. Gribik, why does the
05 California rate payer care whether you wrote it or advised on
06 it?
07 DR. GRIBIK: Well, again, on this one, I gave
08 them advice. They didn't take the advice. They decided to
09 modify what I gave them. They put in a zero floor. Whenever I
10 saw that, I came back and said there was a problem here, and
11 showed them why there was a problem.
12 All it was, I was looking at was, the
13 mathematical procedure that they could use, basically the
14 mathematics to back into prices from the information the ISO
15 provided.
16 It was not, "Here's how you should operate." It
17 was, "Given the ISO gives you these schedules, gives you these
18 usage charges, there is only one mathematically correct way to
19 turn it into zonal prices." And I said, "This is what I think
20 you need." Gave it to them for their -- advised them on it.
21 They modified it, and wrote it according to their
22 right.
23 SENATOR BOWEN: But the point here is that your
24 role at the Power Exchange was not simply to take the publicly
25 available protocols and look at where the holes were.
26 You had a hand in developing the protocols. Two
27 days a week,
0188 "... to engage in thought
01 leadership in development of
02 business rules and market
03 protocols.
04 DR. GRIBIK: Actually I didn't spend --
05 SENATOR BOWEN: That's not correct?
06 DR. GRIBIK: No. I didn't spend two days a week
07 there doing that.
08 SENATOR BOWEN: Did you spend any time doing
09 that?
10 DR. GRIBIK: Like I said, I did review some of
11 their protocols. Gave them some advice on some sections because
12 it was related to congestion management. And they used the
13 advice as they saw fit. I did not sit down and actually write
14 their protocols for them.
15 SENATOR BOWEN: I don't care who wrote the
16 protocols. If you had a hand in developing them, it really
17 doesn't matter whose name was on them.
18 I mean, that's sort of like saying that just
19 because one Legislator's name is on the bill, that nobody else
20 had anything to do with it. Everybody who worked on the process
21 had a hand in it.
22 MR. ARONICA: Senator, he just gave you an
23 example where he gave advice, and they rejected it.
24 CHAIRMAN DUNN: Counsel.
25 SENATOR BOWEN: That's one example.
26 MR. ARONICA: Sorry, okay.
27 SENATOR BOWEN: Let's go on to document Number
0189

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01 858. I don't know the tab number. Tab 21.
02 At least we know who this one is from. This
03 e-mail we've looked at a little bit before. If you go to the
04 second page of it, the last paragraph, second sentence, if we
05 can highlight that, starting, "For example."
06 CHAIRMAN DUNN: Is this the Jack Allen e-mail?
07 SENATOR BOWEN: Yes.
08 "For example, Paul Gribik and
09 Carl Imparato both had imitate
10 knowledge (and actually helped
11 champion) protocols that are
12 the basis of the congestion
13 management and settlement
14 process."
15 That does not sound to me like it is the taking
16 of publicly available protocols. Is this inaccurate?
17 DR. GRIBIK: As I said, I gave advice to the
18 WEPEX process on congestion management. I stated that in my
19 statement.
20 SENATOR BOWEN: To them in the development of
21 protocols?
22 DR. GRIBIK: Well, what that was is, the ISO
23 wanted to use an --
24 SENATOR BOWEN: That's a yes or a no question.
25 You're an engineer, and you can run a circle around me with a
26 very long answer.
27 My question is, did you provide advice in
28 conjunction with the development of congestion management
0190 protocols?
01 DR. GRIBIK: It was before the congestion
02 management protocols were written. I don't know who wrote
03 them. This was during the WEPEX process --
04 SENATOR BOWEN: Did you provide advice?
05 DR. GRIBIK: Again, I'm not sure how to answer
06 that, because no one was at the time writing the protocols. It
07 was saying, how could congestion management be done using an
08 optimal power flow. And that's what I gave them advice on.
09 SENATOR BOWEN: Let me turn to your CV for a
10 moment.
11 CHAIRMAN DUNN: I can identify where that came
12 from.
13 This is, I'll call it a CV. It's your
14 background, experience as represented by a large document
15 submitted to DWR when Perot Systems was making a pitch to DWR
16 for certain work.
17 DR. GRIBIK: Okay.
18 CHAIRMAN DUNN: That's what Senator Bowen is
19 about to refer to. And your CV, if I can call it that, is part
20 of that packet.
21 SENATOR BOWEN: I would love to get a copy of
22 this to you, but my working assumption until it's proven wrong
23 is that the section of this entitled, "Relevant Professional
24 Experience" --
25 CHAIRMAN DUNN: I don't think it's part of it,
26 but we will certainly get copies of this.
27 SENATOR BOWEN: The section entitled, "Relevant
0191 Professional Experience" refers to experience -- information
02 that you've provided, not information that somebody else -- I
03 don't think that's the same thing.
04 CHAIRMAN DUNN: We do have one. We've got a copy
05 up here. I'm sorry, folks. That is it.
06 MR. ARONICA: If we can take a look at it, thank

07 you.
08 CHAIRMAN DUNN: It's under a section entitled,
09 "Team Qualifications."
10 MR. ARONICA: Thank you.
11 CHAIRMAN DUNN: Is that to the Power Exchange? I'm
12 sorry, that he comes out of, it says, "a response to a request
13 for information from California Power Exchange."
14 Similar information is contained in the proposal
15 to the DWR.
16 SENATOR BOWEN: The thing that was of interest to
17 me was the very first bullet. Since we don't have this scanned,
18 I will read it. It says with regard to your relevant
19 professional experience, quote,
20 "Developed the market separation
21 approach used in California to
22 maximize the economic use of
23 transmission and price
24 transmission capacity while
25 providing nondiscriminatory
26 access."
27 It says "developed." It doesn't say, "took
28 publicly available protocols."
0192
01 Can you explain to me --
02 DR. GRIBIK: Yes. This is the formulation of the
03 congestion management process as a mathematical optimization.
04 That is what I did. They wanted to -- they said they wanted a
05 protocol which would allocate transmission to the highest valued
06 use, that would price transmission at the marginal value and use
07 an optimal power flow.
08 This was how you formulate that, saying you
09 minimize cost minus the value -- minimize cost of generation
10 minus value of load, and all the constraints.
11 SENATOR BOWEN: Don't go into the technical part
12 of it with me.
13 All I want to know is, is it accurate that you
14 developed the approach? That's what it says here on this
15 document.
16 DR. GRIBIK: Well, I formulated it. Again --
17 SENATOR BOWEN: Is there a difference between
18 developed and formulated.
19 DR. GRIBIK: Let me back -- let me say one thing.
20 This was a public process. This was what I was
21 hired to give them advice on.
22 I made suggestions to the WEPEX sub-team that was
23 doing this. I gave them presentations on it. We explored it.
24 We discussed it. There were all sorts of people in there with
25 their own ideas.
26 So, I'm just saying, I gave them advice on it.
27 SENATOR BOWEN: I must say that I'm troubled by
28 the fact that when you want to make your qualifications look
0193
01 robust, you use the term "developed" the market separation
02 approach used in California.
03 And when you come in here to this committee, you
04 say, oh, well, all I did was give them advice, and then I took
05 the publicly available protocols and developed trading
06 opportunities, and gaps, and holes, and want information for
07 market participants.
08 You know, you can't have that both ways. Either
09 you developed it, and you had a hand in developing the
10 protocols, in which case you had inside information that was not
11 publicly available, or this is a lie.
12 DR. GRIBIK: No. I did a formulation, again, you

can call it developed. I formulated it, but this was not inside information.

This was a mathematical formulation which was written out and provided to everyone who came to the WEPEX congestion management sub-teams. This was --

SENATOR BOWEN: You didn't know one iota more about that than somebody who walked in and read the minutes of any of those meetings? Not anything? There's nothing more that you would know because of your participation than I would know right now if I went and read the information about what happened?

DR. GRIBIK: If you had the mathematical background to read the optimization formulation, you would have known as much as I know. I wrote out the mathematical formulation saying, "This is the problem you solve. Here's the objective function. Here are all the constraints."

Once I did that, everyone who knew how to solve a linear programming problem, or knew what one was, would know how congestion management worked.

There was nothing else I knew that they would not have known because it was all implicit in the formulation. Once it was out, it was out.

SENATOR BOWEN: But your testimony earlier was, all you did was take publicly available protocols.

You had a hand in formulating those publicly available protocols. I think it's fairly clear from documents.

I'm through, Mr. Chair.

DR. GRIBIK: I think I said in my testimony that I gave them advice on the congestion management process. This was the advice I gave.

SENATOR BOWEN: That was only your testimony after I began to dig through documents.

MR. ARONICA: No, Senator, that was --

CHAIRMAN DUNN: Counsel, Counsel.

SENATOR BOWEN: Your original testimony was that nothing that you did used anything other than publicly available protocols. That's not what happened.

CHAIRMAN DUNN: And the record will speak for itself.

Senator Morrow.

SENATOR MORROW: Thank you, Mr. Chairman.

Mr. Gribik, a few questions. I need to go over a few of the documents.

I apologize, Mr. Chair. I'm not working from the

same ones.

CHAIRMAN DUNN: From 3:00 a.m. this morning.

That's my defense, and I'm sticking to it.

SENATOR MORROW: I think it's in Tab 18, the first one I'll get to. I know we dealt with this e-mail before, Tab 18, 00558. This is the e-mail from Mr. Suding to a numbered list, dated I think that's April 7th; right?

Do you have that, sir?

MR. ARONICA: Yes, it appears to be April 7th -- May 7th.

SENATOR MORROW: I'm sorry, May 7th at 11:05 a.m. To which you were one of the recipients there.

The very first paragraph, I know that Ms. Bowen, I think, covered it to some degree, but I want to go into a little further detail.

It says,

"As a follow-up from the group meeting McMenamin had which

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19 included Paul and George, "
20 First of all, McMenamin, do you know who he
21 is?
22 DR. GRIBIK: He's an Edison Vice President.
23 SENATOR MORROW: And you knew him
24 personally?
25 DR. GRIBIK: No. I really had very -- I think
26 this might have been the first time I met him. I don't recall
27 the meeting.
28 SENATOR MORROW: Okay, "which included Paul and
0196 George." George refers to Dr. Backus; is that correct?
01 DR. GRIBIK: I believe so.
02 SENATOR MORROW: And Paul, that would mean you?
03 DR. GRIBIK: I believe so.
04 SENATOR MORROW: So, this is referring to a
05 meeting which you had with Mr. McMenamin and Mr. Backus; is that
06 correct?
07 DR. GRIBIK: I believe it does.
08 SENATOR MORROW: When did that meeting occur?
09 Did it take place before or on the same day of this e-mail?
10 DR. GRIBIK: I don't recall the meeting, so
11 really couldn't say.
12 I recall one meeting at Edison. We were in one
13 of the VP offices.
14 I don't have any recollection of what was
15 discussed in detail.
16 SENATOR MORROW: Who all was at that meeting?
17 DR. GRIBIK: Again, I have just the vaguest
18 recollection of that meeting.
19 SENATOR MORROW: Give me the vaguest recollection
20 you've got in terms of who was there.
21 DR. GRIBIK: Basically myself and a VP. And I --
22 to tell you the truth, I don't even recall George being there,
23 so I -- I'm not sure.
24 SENATOR MORROW: But goes on. It says,
25 "George was invited in yesterday
26 by Treasurers to talk with a
27 group of [Southern California
0197 Edison] VP's which included
01 Willie Heller."
02 I mean, Suding being the distributor of this, so
03 they indicate that you would have some knowledge about it.
04 Does that refer to a separate meeting or the same
05 one that we just talked about, to your knowledge?
06 DR. GRIBIK: Does which refer to a separate
07 meeting? The George being invited yesterday?
08 SENATOR MORROW: It says,
09 "George was invited in yesterday
10 by Treasurers to talk with a
11 group of [Southern California
12 Edison] [Vice Presidents] which
13 included Willie Heller."
14 DR. GRIBIK: I don't know, but it sounds from the
15 language to me like it's a separate meeting.
16 SENATOR MORROW: From your experience and
17 knowledge, "invited in yesterday by Treasurers," to you, what
18 would "Treasurers" mean to you by that?
19 DR. GRIBIK: I would imagine their treasury
20 department, or whatever they call it. I really don't know.
21 SENATOR MORROW: Okay. Apparently, this refers
22 to a meeting with a Mr. Heller, and going on it says "Vikram
23 Budhraj a."
24

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25 First of all, do you know Mr. Heller?
26 DR. GRIBIK: I met him maybe once or twice.
27 That's about it.
28 SENATOR MORROW: And his position?
0198
01 DR. GRIBIK: He was a vice president, but I'm not
02 sure of what.
03 SENATOR MORROW: With Edison?
04 DR. GRIBIK: Yes.
05 SENATOR MORROW: And Mr. Budhraj? I may not be
06 pronouncing it right.
07 DR. GRIBIK: I'm not sure if he was a vice
08 president or a manager at Edison.
09 SENATOR MORROW: Do you know him?
10 DR. GRIBIK: I met him once or twice.
11 SENATOR MORROW: Were you present at all in this
12 meeting which those two gentlemen were at?
13 DR. GRIBIK: I don't recall it.
14 SENATOR MORROW: Have you been present at any
15 time in any meetings with those gentlemen?
16 DR. GRIBIK: Not that I recall.
17 SENATOR MORROW: On the subject of Vikram
18 Budhraj, turn the page over to 000559. In the middle there's
19 an e-mail dated May 9th, '97, 12:09 a.m. The author is Hemant
20 Lall, or appears to be Hemant Lall.
21 DR. GRIBIK: Yes.
22 SENATOR MORROW: And it's dated May 9th, 1997.
23 First of all, Hemant Lall, do you know who that
24 is?
25 DR. GRIBIK: Yes, I do.
26 SENATOR MORROW: Who is he?
27 DR. GRIBIK: He was a Perot Systems person.
28 SENATOR MORROW: So, he was a fellow employee
0199
01 with you at the time?
02 DR. GRIBIK: Yes.
03 SENATOR MORROW: Now, apparently this is an
04 e-mail to Mr. Al Suding; is that right?
05 DR. GRIBIK: I believe so.
06 SENATOR MORROW: I'm not sure whether or not you
07 would have received a copy of this, or if you've seen this
08 before. Have you?
09 DR. GRIBIK: I may have. I don't -- I don't
10 know.
11 SENATOR MORROW: If you need to take a moment to
12 look at it, go ahead.
13 DR. GRIBIK: I've seen it. I may have received
14 it.
15 SENATOR MORROW: I just wanted to ask you, how
16 closely did you work with Mr. Lall?
17 DR. GRIBIK: He was my first supervisor at Perot
18 Systems, and at this time just sporadically on marketing
19 efforts.
20 SENATOR MORROW: In the middle of that e-mail it
21 states -- I'm sorry. I don't know if you're trying to get it on
22 that screen.
23 In the middle of the e-mail it says, "Vikram,"
24 referring to Mr. Budhraj,
25 "... is heading up deregulation
26 at Edison. He is our mentor."
27 Do you see that?
28 DR. GRIBIK: Yes.
0200
01 SENATOR MORROW: I know you're not the author of

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02 that, but I'm interested if you have any thoughts of what is
03 meant by that? Why would Mr. Hemant Lall view Mr. Budhraj as
04 not really his, but he says "our mentor," presumably referring
05 to Perot Systems?
06 DR. GRIBIK: I think that they were friendly
07 because they came from the same town in India, if I'm not
08 mistaken. That's speculation on my part.
09 SENATOR MORROW: So you really don't know?
10 DR. GRIBIK: I really don't know.
11 SENATOR MORROW: You don't know what capacity at
12 all Mr. Budhraj might have been involved with in this deal with
13 Perot Systems?
14 DR. GRIBIK: No idea.
15 SENATOR MORROW: Did you know at the time that
16 Mr. Budhraj was a member of the ISO Governing Board?
17 DR. GRIBIK: I didn't. I don't think I knew who
18 was on the Board.
19 SENATOR MORROW: Did you know that, in fact, the
20 day before that, on May 8th, the very first meeting of the ISO
21 Board took place in which Mr. Budhraj was present?
22 DR. GRIBIK: No, I didn't know that.
23 SENATOR MORROW: Weren't you at that meeting?
24 DR. GRIBIK: At the first ISO Board meeting?
25 SENATOR MORROW: Right.
26 DR. GRIBIK: I don't think I was. Maybe I was.
27 SENATOR MORROW: Were you also aware Mr. Budhraj
28 was the Chairman of the Technical Advisory Committee of the ISO?
0201
01 DR. GRIBIK: I don't recall what I knew about him
02 at that time. I really couldn't say.
03 SENATOR MORROW: And that it was on May 8th in
04 which the meeting of that committee first took place. Weren't
05 you present at that meeting?
06 DR. GRIBIK: No -- which committee?
07 MR. ARONICA: Which committee?
08 SENATOR MORROW: The Technical Advisory
09 Committee.
10 DR. GRIBIK: I don't recall going to --
11 SENATOR MORROW: I'm sorry. Now I'm confusing
12 things.
13 MR. ARONICA: Is this a board meeting,
14 Senator?
15 SENATOR MORROW: It was a board meeting. I
16 apologize. You weren't present at that.
17 Have you ever been present at any ISO Board
18 meeting or a Technical Advisory Committee meeting?
19 DR. GRIBIK: I've been to ISO Market Information
20 Forum meetings, stakeholder meetings.
21 I -- I don't recall if I was at a Board meeting.
22 I'm not sure why I would have attended one.
23 SENATOR MORROW: I was referring actually to an
24 article from "Hoovers on Line," dated July 10th, 2002.
25 I don't know if you're familiar with that at all.
26 DR. GRIBIK: No, I'm not.
27 SENATOR MORROW: I mean, it states -- let me read
28 it to you.
0202
01 MR. ARONICA: Could we get a copy of that?
02 SENATOR MORROW: By all means.
03 It says,
04 "At Perot Systems Mr. Gribik
05 would work on a huge project
06 helping to create ..."
07 This is an article. It's a journalist talking here,

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"... helping to create a statewide power trading system. It would be a remarkable job for any energy expert. Two pieces of an energy trading system, the California Independent System Operator and the California Power Exchange, hired Perot Systems in early 1997 to write the software that made the markets function. Mr. Gribik began attending meetings of the ISO's Technical Advisory Committee which was discussing the design of the markets."

If you need to review that, please go ahead.

That's what it says.

DR. GRIBIK: I attended their stakeholder processes, where the stakeholders would discuss --

SENATOR MORROW: Did Mr. Budhraj chair those meetings?

DR. GRIBIK: I don't think so. I don't recall him being at them.

SENATOR MORROW: In the course of that article it notes that at these committee hearings, they opted for a decentralized market. And apparently there was some discussion and debate about that.

Were you ever present at any of these meetings?

DR. GRIBIK: Senator, that would have been early in the WEPEX -- actually that was before the WEPEX process, I believe, even started. That was whenever the CPUC was looking at how the market should be deregulated: Should it be a centralized pool or bilateral trading.

That was all decided long before this, I believe. I think it was in the '95 timeframe, if I'm not mistaken. So, I'm very confused by that.

SENATOR MORROW: I would be, too.

This article refers to the Technical Advisory Committee, and that was meeting in May of 1997.

Let me move on.

MR. ARONICA: We don't have any idea what the reporter's talking about, or whether he had his facts straight. Wouldn't unusual for reporters not to have their facts straight.

CHAIRMAN DUNN: I'm shocked that someone would make that suggestion.

SENATOR MORROW: As far as the subject of the e-mails that we've talked about, and the proposed deal, if you will, between Perot Power Systems and Edison, part and parcel of

that, of course, was that PAC or the Policy Assessment Corporation be involved in that as well; is that right?

DR. GRIBIK: Yes.

SENATOR MORROW: With respect to Edison, what was your understanding as far as which part or what part of Edison would be a part of that deal?

DR. GRIBIK: I don't know if I ever really looked at the -- any proposals to them in great detail. I just assumed, if anything, it'd be the utility distribution company.

SENATOR MORROW: The utility side. You didn't have any thoughts at all in terms of it being on the generating side or the trading side? The parent company, Edison International?

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14 DR. GRIBIK: I don't recall thinking of that.
15 SENATOR MORROW: If I can, Mr. Chair, I have no
16 idea where it's tabbed at, 000154.
17 CHAIRMAN DUNN: We're looking at which tab. We've
18 got it up there, but we're looking for which tab. Tab 3.
19 Once again, Donna is far ahead of us.
20 It's at the end of Tab 3. Have you got it?
21 MR. ARONICA: Yes, we do, Senator.
22 SENATOR MORROW: Mr. Gribik, if you need to, take
23 a moment to familiarize yourself with the document.
24 I'd like to know whether or not you've seen it
25 before?
26 DR. GRIBIK: I don't recall ever seeing this
27 document.
28 SENATOR MORROW: In looking at it, though, it
0205
01 does appear to you, does it not, that this is project cost
02 estimates for the project that we're discussing with Perot Power
03 Systems. This is actually generated by Policy Assessment
04 Corporation, according to the document.
05 The first paragraph reads,
06 "The purpose of this project is
07 to develop a real-time software
08 system that maximizes Edison
09 International's profitability
10 after January 1, 1998"
11 Does that sound reasonable, and does this appear
12 to be a reasonable draft project cost for the deal that we're
13 talking about?
14 DR. GRIBIK: I haven't studied it, so I couldn't
15 say. I was not -- as far as I recall, I was not involved in
16 preparing any proposal to them. Just they may have wanted to
17 use me in it, but I don't recall doing any cost estimates.
18 SENATOR MORROW: It appears, at least, to be
19 prepared by Policy Assessment Corporation, thus Dr. Backus, and
20 in reading this, and the reason I bring it up, and I want to
21 know if it comports with your understanding, that the deal or
22 the project would be done with Edison International, as opposed
23 to Southern California Edison.
24 DR. GRIBIK: Again, I don't recall seeing this
25 before, but that's what it looks like they're saying.
26 SENATOR MORROW: It sure does. Would that be
27 inconsistent with your understanding, however?
28 DR. GRIBIK: All I ever was told was, they were
0206
01 talking to Edison, so, you know.
02 SENATOR MORROW: You're aware that Edison Mission
03 Energy, of course, is the trading arm of Edison International?
04 DR. GRIBIK: Yes, I know.
05 SENATOR MORROW: And that's separate from the
06 utility; right?
07 DR. GRIBIK: Yes.
08 SENATOR MORROW: And there's supposed to be a
09 firewall at least between the two; isn't there?
10 DR. GRIBIK: I don't know what their arrangement
11 is.
12 SENATOR MORROW: One other area I want to go to.
13 I know that we've been here before, Mr. Chairman, and I
14 apologize. I'm referring to the April 9th letter from
15 Mr. Gribik to Fred Mobasher.
16 CHAIRMAN DUNN: Now we understand it's Tab
17 Number 2. The Bates number is 24.
18 SENATOR MORROW: Do you have that, sir?
19 DR. GRIBIK: Yes.

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20 SENATOR MORROW: You generated this document.
21 DR. GRIBIK: Yes, I did.
22 SENATOR MORROW: And Fred Mobasher, who is he?
23 DR. GRIBIK: He was the manager of the Market
24 Monitoring Unit at the PX.
25 SENATOR MORROW: This is dated April 9th, 1998.
26 The first paragraph, let me read it,
27 "The PX must ensure that its
28 markets are stable and efficient.
0207
01 A participant may be able to
02 employ strategies that increase
03 its profits at the expense of the
04 stability and efficiency of the
05 PX and ISO markets. Such
06 strategies can be developed to
07 take inappropriate advantage of
08 a number of areas including flaws
09 in the PX and ISO tariffs and
10 protocols."
11 Do you see that paragraph?
12 DR. GRIBIK: Yes.
13 SENATOR MORROW: It refers to "inappropriate
14 advantage of a number of areas including flaws."
15 What did you mean by that, "inappropriate?"
16 DR. GRIBIK: Well, I thought that there were some
17 strategies that should not be employed.
18 SENATOR MORROW: Such as?
19 DR. GRIBIK: I didn't have any specific examples
20 at that time. I thought that, for example, the Silver Peak
21 example, the negative price one, which I had them correct before
22 the market opened, would have been inappropriate. And that's
23 one of the reasons I pushed so hard for them to close it.
24 What I was worried about here was that there
25 might be other areas where such things existed, and that the
26 Market Monitoring Unit might want to proactively seek them out.
27 SENATOR MORROW: In fact, that's the subject of
28 this letter. You're making recommendations to the CalPX to
0208
01 perform a detailed investigation of the ISO and the PX tariffs
02 and protocols for that purpose; correct?
03 DR. GRIBIK: Yes.
04 SENATOR MORROW: I apologize. We've had so many
05 protocols. I believe if you can go to Tab Number 31.
06 CHAIRMAN DUNN: Part of the document is in.
07 We're going to try to determine whether the part that Senator
08 Morrow's about to refer to is part of that part.
09 SENATOR MORROW: What I have is, I understand
10 it's a Power Point document. It's entitled, "Profit
11 Maximization under UK and US Deregulation."
12 MR. ARONICA: Is that a separate document.
13 CHAIRMAN DUNN: The non-PSC Bates stamp number is
14 10804.
15 SENATOR MORROW: That's it.
16 MR. ARONICA: We have it.
17 SENATOR MORROW: Take a moment if you need to
18 review that. My first question is if you're familiar with this
19 Power Point presentation document?
20 DR. GRIBIK: I've seen it.
21 SENATOR MORROW: You've seen this. Let me back
22 up. It says, "Profit Maximization under UK and US
23 Deregulation."
24 Have you ever had any participation at all with
25 United Kingdom energy markets?

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26 DR. GRIBIK: No, I didn't.
27 SENATOR MORROW: None whatsoever?
28 DR. GRIBIK: None whatsoever.
0209
01 SENATOR MORROW: This is apparently by Dr. George
02 Backus with the Policy Assessment Corporation. I see your name
03 there, along with Dr. Hemant Lall and others.
04 It appears to be a design, or a draft at least,
05 for a presentation to Enron on January 13th, 1998.
06 DR. GRIBIK: Yes, it was a draft.
07 SENATOR MORROW: When did you first become aware
08 of this particular document?
09 DR. GRIBIK: I'm not sure when I first saw it. I
10 saw it obviously when preparing for this, I -- reviewing the
11 documents. I may have seen it back in January timeframe.
12 SENATOR MORROW: You were generally aware that
13 Dr. Backus was preparing a presentation to be made to Enron?
14 DR. GRIBIK: Yes, he was preparing a
15 presentation, and we were supposed to travel up and meet
16 him.
17 SENATOR MORROW: To your knowledge, the
18 presentation never actually took place though?
19 DR. GRIBIK: Never took place as far as I know.
20 SENATOR MORROW: Would it be consistent with your
21 belief, however, that this document was prepared in order to
22 make that presentation?
23 DR. GRIBIK: I believe it was started to be
24 prepared, but it looks like a draft whenever I went through it,
25 because there were missing slides and other things.
26 CHAIRMAN DUNN: May I interrupt for one second?
27 I just want to interrupt for one thing, because
28 this is a perfect place to insert this. We didn't address it
0210
01 before, Mr. Gribik.
02 This is not something you're aware of, but I just
03 want it noted for further follow-up.
04 I believe you stated, and we've heard from other
05 witnesses, I believe, who believe that that January Enron
06 meeting did not occur because of bad weather.
07 DR. GRIBIK: Did not occur because of bad
08 weather.
09 CHAIRMAN DUNN: The expense reports, however,
10 from Mr. Ed Smith, he was reimbursed for travel expenses
11 associated with that meeting.
12 DR. GRIBIK: No, I was the one who was reimbursed
13 because I flew into Portland, and there was such a snow storm
14 that one else could come in, and I caught the very next flight
15 back into Oakland.
16 CHAIRMAN DUNN: That may be true, but I don't
17 think you changed your name to Ed Smith.
18 DR. GRIBIK: Oh, okay. Well, I'm just saying
19 that I was only one that I knew that made it there. I got in,
20 never left the airport, and turned around.
21 SENATOR PEACE: Mr. Chairman, when do we get to
22 the better people that made Mr. Perot feel real confident?
23 SENATOR MORROW: Now I'm confused. Let me try to
24 unconfuse myself here.
25 Did you go to Portland for the purpose of
26 delivering that presentation to Enron?
27 DR. GRIBIK: I went to Portland for the purpose
28 of meeting with Enron. I was not going to make the
0211
01 presentation.
02 SENATOR MORROW: Were you generally aware that

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03 Dr. Backus was going to make the presentation?
04 DR. GRIBIK: I believe that was my understanding.
05 CHAIRMAN DUNN: Can I interrupt one more time?
06 I want to complete the picture. Mr. Backus also
07 submitted reimbursements for travel expenses for the January '98
08 meeting in Portland.
09 DR. GRIBIK: Maybe I'm confused about the time
10 then, because I flew in one day, and I was only one that made
11 it. And it was snowing so bad that I turned around.
12 CHAIRMAN DUNN: So, everybody made it --
13 DR. GRIBIK: No.
14 CHAIRMAN DUNN: -- but the snow storm prevented
15 the meeting. It's rhetorical, Mr. Gribik.
16 MR. ARONICA: Senator, are those travel
17 reimbursements dated at or about the beginning of January?
18 CHAIRMAN DUNN: Yes, same date, Counsel.
19 Senator Morrow.
20 DR. GRIBIK: I may have the wrong date then.
21 Maybe there was a subsequent meeting that I did not attend. I
22 don't know.
23 All I know is, I flew in one day. It was
24 snowing. Got a cell phone call saying it's off, and I turned
25 around and immediately came back.
26 SENATOR MORROW: I'm actually less concerned
27 about whether you arrived and made it to the meeting that didn't
28 take place.

0212
01 I'm more concerned with the substance of this
02 document. I see that your name is on here, Dr. Paul Gribik.
03 DR. GRIBIK: Yes.
04 SENATOR MORROW: So presumably, you knew that
05 your name was on this document, or it'd be part of that
06 proposal; that is correct?
07 DR. GRIBIK: Dr. Backus prepared it. The other
08 people below, I believe, were just listed as people who were
09 going to be attending the meeting. I was not the author of this
10 document.
11 SENATOR MORROW: Oh, really. You're suggesting
12 on the front page there that these are just the list of
13 attendees?
14 DR. GRIBIK: Well, it's the people who were
15 coming up to make the presentation. I had nothing to do with
16 preparing this document.
17 SENATOR MORROW: You had no input at all into
18 this document?
19 DR. GRIBIK: No, I didn't.
20 SENATOR MORROW: None whatsoever?
21 DR. GRIBIK: None whatsoever.
22 SENATOR MORROW: To your knowledge, besides
23 Dr. Backus, who gave input into this document?
24 DR. GRIBIK: I thought it was Dr. Backus.
25 SENATOR MORROW: Solely Dr. Backus.
26 DR. GRIBIK: That was my understanding, because I
27 noticed whenever I went through it, there were slides that said
28 Perot Systems, and they were blank.

0213
01 SENATOR MORROW: Well, you've gone through that
02 entire document; correct?
03 DR. GRIBIK: Yes.
04 SENATOR MORROW: Did you see anything in that
05 document that would lead you to believe that you did give input
06 into it? Did you see any of your own work product, if you will?
07 DR. GRIBIK: I didn't see anything that I wrote
08 in there.

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09 SENATOR MORROW: Just to be more specific at
10 least, and there's several pages I can direct you to, but I only
11 want to direct you to one page in particular.
12 CHAIRMAN DUNN: I wish I could confess that there
13 was a strategy as to which pages we selected to put in the book.
14 That was 4:00 a.m.
15 SENATOR MORROW: I sure wish Dr. Backus was
16 here.
17 All right. The only way I can identify this, Mr.
18 Chairman, is on the PSC Bates stamp, 007258.
19 CHAIRMAN DUNN: There's no non-PSC Bates stamp on
20 there?
21 SENATOR MORROW: Correct. At least on my copy.
22 CHAIRMAN DUNN: Senator Morrow, if you'd just
23 identify it.
24 We'll try to get copy here, Counsel.
25 MR. ARONICA: Fine, thank you.
26 SENATOR MORROW: Do you have it? I apologize.
27 Had I known, I would have made a copy myself to give to you.
28 It's one page of the Power Point program. It's
0214
01 entitled, "California Gaming." There we go.
02 CHAIRMAN DUNN: It's the one with the money bags
03 in the lower right-hand corner.
04 SENATOR MORROW: It's obvious we didn't
05 choreograph this.
06 As you can see, it's entitled "California
07 Gaming."
08 "Abundant Complex Rules Cause Abundant
09 Complex Gaming," "Large Domain Between Genteel and Illegal."
10 You've never seen this particular page before,
11 Mr. Gribik?
12 DR. GRIBIK: I've seen it. I did not author it.
13 SENATOR MORROW: What did you think about it when
14 you saw that? What did it mean to you?
15 DR. GRIBIK: Well, I never heard Dr. Backus
16 actually deliver his presentation, so I'm not sure what his
17 talking points would have been around them.
18 I think that what he was saying was that there
19 are a lot of strategies that could be employed in California,
20 some -- some beneficial, some acceptable, some that should not
21 be used because they're illegal.
22 SENATOR MORROW: Let me just focus on the last
23 three dots. Actually we've got a fourth dot there, where it
24 says, "N/S." Do you have any idea what "N/S" would mean?
25 DR. GRIBIK: I would guess he might mean
26 north/south, but I'm not sure.
27 SENATOR MORROW: Reading on,
28 "Generation can cause congestion
0215
01 that increases revenue for south
02 generation despite congestion
03 costs."
04 You're much more familiar, and an expert in the
05 industry than I'll ever be. What does that mean to you?
06 DR. GRIBIK: I'm not precisely sure what he meant
07 by north/south generation, to be -- I'm just not exactly sure
08 what he meant by this.
09 SENATOR MORROW: That doesn't convey to you
10 reasonably the prospect of maximizing profits by congestion
11 charges?
12 DR. GRIBIK: I don't think it's by congestion
13 charges, because I don't believe -- I don't see how you can
14 create congestion in the California market and be paid to

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15 relieve it. In the California markets, you pay to use the
16 transmission line. No one pays you to get off.
17 So, what I think he might be referring to here
18 is, if there is congestion on a path, the price for energy in a
19 zone may go up, which is the case. If there is -- if your lines
20 are filled, and you can't bring in any more cheap power because
21 the lines are carrying as much as they can into a zone, that
22 zonal price has to go up.
23 SENATOR MORROW: About half the members up here
24 fell off their seats.
25 Have you ever heard of the term Fat Boy, or Death
26 Star?
27 DR. GRIBIK: Fat Boy, I don't think, has anything
28 to do with congestion.
0216
01 SENATOR MORROW: I may be getting them mixed up,
02 but from the Enron documents, the Yoder document and the like,
03 you're familiar with that? You've read those by now; haven't
04 you?
05 DR. GRIBIK: I haven't read them in detail. I
06 just glanced at them.
07 SENATOR MORROW: Really? You haven't read that
08 in detail?
09 DR. GRIBIK: No, I haven't.
10 SENATOR PEACE: You were the guy that the ISO
11 hired as an expert?
12 DR. GRIBIK: Yes, and I --
13 SENATOR PEACE: That's all I needed to know. It
14 sort of explains everything, doesn't it?
15 MR. ARONICA: Senator, I object to those
16 comments.
17 CHAIRMAN DUNN: You can object, Counsel. You've
18 already made your objection.
19 Senator Morrow.
20 SENATOR MORROW: Noted for the record.
21 I mean, if you wouldn't care to read that and a
22 lot of other things, I mean, it's a matter of public record now
23 that there were schemes, some would say scams, to basically
24 create phantom congestion, if you will, over transmission lines
25 and the like in order to reap what's known as a congestion
26 charge, which is exactly reaping a profit by either moving
27 energy in the opposite direction, or relieving the congestion
28 itself by taking energy off the grid.
0217
01 You're not familiar with that?
02 DR. GRIBIK: Well, I didn't read the Death Star
03 in detail. I have some ideas what it may be, but I haven't seen
04 it all.
05 And, Senator, from what you --
06 SENATOR MORROW: So you're not familiar. You
07 have know idea what that fourth bullet point refers to.
08 DR. GRIBIK: If we look at Death Star, I think
09 what they may have been doing -- I think, but I haven't studied
10 it in detail -- was not creating congestion to be paid for it.
11 I think what they were doing was using a method
12 of setting up a loop flow to sell transmission that was not on
13 the ISO system to ISO users. I think that's what happened.
14 There is a way that can be done, and actually I
15 gave the ISO a memo on that back in '98, saying, I think the way
16 ETCs, existing transmission contracts, could be scheduled,
17 somebody may be able to sell that capacity on your system by
18 setting up a loop flow.
19 SENATOR MORROW: Would that be appropriate or not
20 appropriate?

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21 DR. GRIBIK: And what I said in that memo to the
22 ISO was, I don't know whether this is good, bad, or indifferent.
23 I haven't studied it. You should be aware of it. You may want
24 to look at it.
25 SENATOR MORROW: Why would you want them to look
26 at that?
27 DR. GRIBIK: Because I thought it was something
28 they should be aware of that could happen. I didn't know if it
0218 was appropriate or not. It was their system. I said, here's
01 something I think somebody could do. You may want to examine
02 it.
03 SENATOR MORROW: You had no inkling whether or
04 not that would be appropriate?
05 DR. GRIBIK: I didn't study it, Senator. It
06 was --
07 SENATOR MORROW: Let's go on to the next bullet
08 point, the next to last,
09 "Force interzonal constraint
10 that hurts competitor worse."
11 What does that mean to you? Tell me what that
12 means.
13 DR. GRIBIK: I think that what somebody is
14 saying, or what he's saying there is, that if two people want to
15 compete for a transmission line to bring power in, one person
16 may be willing to pay to use that transmission line because it
17 -- not having access to that capacity is more detrimental to the
18 other person than the cost of doing this, and may -- improves
19 their competitive position. That's --
20 SENATOR MORROW: Okay, final bullet point. It
21 says.
22 "Build plant at interconnect to
23 cause congestion problems."
24 I confess to you, I thought power plants were
25 built to produce power, and to sell power, and to get the lights
26 on, not to cause congestion problems.
27 What does that mean to you?
28
0219 DR. GRIBIK: I think this may be something he saw
01 in England, where I gather that games like that were played.
02 I -- I don't think that was -- I didn't that was possible in
03 California because of the generation planning, transmission
04 planning requirements.
05 I'm not sure how he was going to play that.
06 SENATOR MORROW: We referred to your letter of
07 April 9th a moment ago, in which you labeled strategies that
08 would be in appropriate.
09 I guess what I'm asking, Mr. Gribik, is whether
10 or not the strategies that you were referring to in your letter
11 would be the very same strategies that are referred to in this
12 page of that document?
13 DR. GRIBIK: I don't think I identify any
14 strategies in particular in this memo.
15 SENATOR MORROW: I know you don't identify them
16 in the memo.
17 I'm asking you whether or not these types of
18 strategies would fall within what you contemplated in that memo?
19 DR. GRIBIK: Well, I'm not sure exactly what he
20 meant, but I think the first one refers to self-management of
21 your imbalance, which is one of the things the ISO protocols
22 specifically allow people to do. You can track your -- if you
23 have generation and load and they get out of sync, you're
24 allowed to track. So, that, I think, is appropriate.
25 SENATOR MORROW: Let's make it simple. Let's go
26

27 to the bottom one, where it says,
 28 "Build plant at interconnect
 0220
 01 to cause congestion problems."
 02 Let me first ask you --
 03 DR. GRIBIK: No, I would not think that somebody
 04 should do that, and I don't think the ISO protocols would allow
 05 you to do that.
 06 SENATOR MORROW: At least in your opinion, that
 07 would be totally inappropriate?
 08 DR. GRIBIK: I wouldn't recommend it, so yes.
 09 No, it's inappropriate. I would not recommend anyone do that,
 10 is what I'm saying.
 11 SENATOR MORROW: Thank you, Mr. Chairman.
 12 CHAIRMAN DUNN: Mr. Drivon, did you have any
 13 follow-up?
 14 MR. DRIVON: Yes.
 15 CHAIRMAN DUNN: We're about getting to you,
 16 Mr. Shirmohammadi.
 17 MR. DRIVON: Mr. Gribik, were you involved in the
 18 presentation that was made to San Diego Gas and Electric?
 19 DR. GRIBIK: Yes, I was.
 20 CHAIRMAN DUNN: Mr. Gribik, could you move closer
 21 to the mike?
 22 DR. GRIBIK: Yes, sir.
 23 MR. DRIVON: Chart 1, please.
 24 CHAIRMAN DUNN: This may have been another
 25 product our 4:00 a.m.
 26 DR. GRIBIK: This was not my presentation. As
 27 far as I know, this was never delivered to San Diego Gas and
 28 Electric.
 0221
 01 MR. DRIVON: Well, this is an example of market
 02 gaming tactics. Let's look at the third one down.
 03 Would you agree that having a sudden outage of a
 04 big plant so your spot market plants make more money would be a
 05 gaming tactic?
 06 DR. GRIBIK: It says it's an example of gaming.
 07 It's an example of a strategy.
 08 MR. DRIVON: What does this have to do with the
 09 gaming theories as promulgated by Professor Nash?
 10 DR. GRIBIK: These -- again, I'm not sure what
 11 George's talking points would have been around this, but these
 12 are examples of tactics that people could employ. And I believe
 13 that if you were going to go play in this market, you should be
 14 aware of not only what you can play, but what people can do
 15 against you. This could well be --
 16 MR. DRIVON: Mr. Perot indicated that you would
 17 be able to tell us what the connection was between some of these
 18 things.
 19 DR. GRIBIK: Again, this is not my presentation.
 20 MR. DRIVON: Well, my question is that Mr. Perot
 21 indicated to us that we didn't understand gaming. And he
 22 indicated to us that gaming was something that was, you know,
 23 first explained to the world by Dr. Nash. And that that's what
 24 was really meant, and it was a lot of economic theory.
 25 And I want to know what part of Dr. Nash's
 26 theories have to do with the sudden outage of a big plant so a
 27 spot market plant can make more money?
 28 DR. GRIBIK: I think what he was referring to
 0222
 01 here are examples of gaming strategies that he has observed in
 02 other markets, because if you notice, the one right below it
 03 talks about LOLP price. That is not a part of the California

04 market.
05 I think this might be things that he's seen in
06 other markets, because I believe early on he talks about the UK,
07 Australia, and other places.
08 This, like I said, I did not write this, and I
09 don't know what his talking points were.
10 I read this as him saying, these are examples of
11 things that have been observed.
12 CHAIRMAN DUNN: Let me just do one follow-up
13 question.
14 Would you agree that having sudden outage of big
15 plants so your spot market plants make more money is not part of
16 Dr. Nash's economic gaming theories?
17 DR. GRIBIK: What I would say is that, that is an
18 inappropriate strategy.
19 However, you should be aware that somebody could
20 do that. Maybe you could come up with a protective strategy.
21 So, you should not play it. It may be an illegal strategy.
22 However, you should be aware of them because you might want to
23 set your strategies so you can protect yourself against
24 something like that.
25 CHAIRMAN DUNN: But true, it's not part of Dr.
26 Nash's economic gaming theory?
27 CHAIRMAN DUNN: No, I would say it is, because
28 you have to -- the whole thing of game theory is, what
0223 strategies should I play, given what strategies other people may
01 play, good, bad, or indifferent. You have to be able to protect
02 yourself.
03 If you're saying that the market is going to
04 protect you and they don't, then you've lost.
05 So, I think you have to be aware of the whole
06 range. You should not play this strategy, but somebody may play
07 it against you.
08 CHAIRMAN DUNN: Senator Peace.
09 SENATOR PEACE: Again, we always circle back to
10 the same place.
11 These were strategies that people had observed
12 and postulated based not on necessarily just specific
13 observations of the California market, but on various
14 deregulated markets in the UK and elsewhere; correct?
15 DR. GRIBIK: I believe so, mainly because he
16 refers to some aspects of the UK market up there.
17 SENATOR PEACE: And in fact, many of the
18 speculation would be based on the expectations of how players in
19 the game might react to economic incentives, even based on
20 commodity markets other than electricity markets; correct?
21 It's about how economic competitors typically
22 react to market incentives.
23 DR. GRIBIK: I guess I'm not sure of the
24 question.
25 Are you saying that the --
26 SENATOR PEACE: I promise, it's not a trap
27 question.
28
0224 DR. GRIBIK: No, I'm just kind of -- what I'm
01 trying to say is that --
02 SENATOR PEACE: These are speculations about the
03 kinds of things people might do, they might be economically
04 incented to do, in an effort to maximize profits; correct?
05 DR. GRIBIK: Somebody may play this, and it may
06 be inappropriate.
07 SENATOR PEACE: Right. If you're a market
08 participant, whether or not you would intend to engage in these,

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10 your testimony is, you would be wise to be aware of what others
11 might do --
12 DR. GRIBIK: Yes.
13 SENATOR PEACE: -- in an effort to assure that
14 you have an appropriate defensive strategy.
15 DR. GRIBIK: Yes.
16 SENATOR PEACE: You might also have an offensive
17 strategy that you position yourself in such a way that you are
18 less vulnerable to one or other tactic that you may choose not
19 to employ; correct?
20 DR. GRIBIK: I would say so.
21 SENATOR PEACE: In looking at the -- and I'm not
22 going to go in and make a specific reference, Doctor, but more
23 than once there are references in Dr. Backus' documents and
24 other documents that note that no matter what rules are adopted,
25 that gaming strategies will emerge and evolve to unplug the
26 holes that are plugged. Is that not generally the case?
27 DR. GRIBIK: I don't know if I'd say it's to
28 unplug the holes that are plugged. It's just any complicated
0225 economic market system, the strategies you use are basically
01 described by game theory.
02 SENATOR PEACE: Now, you read Dr. Backus' letter
03 to the PG&E, did you not?
04 MR. ARONICA: Which one is that?
05 SENATOR PEACE: I think it's the one that starts
06 with, "You may want to throw this away."
07 CHAIRMAN DUNN: Number 23.
08 SENATOR PEACE: If you go to the third page,
09 which would be 001077.
10 DR. GRIBIK: Yes.
11 SENATOR PEACE: It's the middle of that page. It
12 starts with,
13 "Gaming may be a dirty word to
14 FERC and the California
15 commission, but the sooner the
16 market clears out the
17 distortions, the better it works
18 for everyone."
19 You were a colleague of Dr. Backus? You worked
20 with him?
21 DR. GRIBIK: No, I never worked with him. All we
22 did was work on some marketing.
23 SENATOR PEACE: So, you didn't really know much
24 about his theories?
25 DR. GRIBIK: Dr. Backus? I did not know his
26 stuff all that well. All I saw was his computer program. I saw
27 his --
0226 SENATOR PEACE: Were you aware of here, where he
01 says,
02 "There may be ethical issues
03 related to 'the end justifying
04 the means' but there is a large
05 region of opportunities between
06 what is ethically viable ... and
07 ethically dangerous"
08 I mean, it looks awfully familiar to that chart,
09 what was put in that chart.
10 MR. ARONICA: Senator, which page are you at?
11 SENATOR PEACE: Same, we're still on the same
12 page, middle paragraph. It starts "Gaming," and go down to the
13 middle sentence, "There may be ethical issues related to 'the
14 end justifying the means.'"
15

16 Read that sentence.
 17 DR. GRIBIK: He's saying that the strategies can
 18 range from ethically acceptable to illegal.
 19 SENATOR PEACE: Now go to the next -- the
 20 sentence just before that says,
 21 "The 'gaming' defeats the flaws
 22 in the system and ultimately
 23 the players or features that
 24 lead to market distortions."
 25 You didn't know enough about Dr. Backus to know
 26 of his personal theory that, in essence, whether it was putting
 27 the ethics aside, that there was a greater goal to be made,
 28 which is to get all the rules out of the way in order to get --
 0227
 01 DR. GRIBIK: I don't read it that way. I do not
 02 read it that way.
 03 SENATOR PEACE: So you felt you did have a good
 04 sense of where Dr. Backus was headed?
 05 DR. GRIBIK: What -- what I take that to mean,
 06 and what I've been told by other people about the California
 07 market design, is that on our market design, the way we had it
 08 set up here, we did not clear the markets. If you just bid
 09 directly into it, the markets -- you would not come up with
 10 market clearing prices and clear all the trades.
 11 We had sequential markets where you had energy
 12 followed by the various reserve markets done in sequence. Those
 13 markets could not look at the fact that you could use capacity,
 14 generation capacity, to produce energy or produce any one of
 15 different categories of reserves. They were run in sequence.
 16 As a result, you could get price inversions,
 17 where energy cleared at a low price, and the lowest quality
 18 reserve cleared at a very high price. That meant that the
 19 market had not cleared. And the only way this market would
 20 clear would be if people learned to bid their opportunity costs
 21 and forecast the price differences.
 22 What I take this to mean is, he's saying because
 23 of structural flaws, the markets couldn't clear. The only way
 24 the markets could clear is if people took into account these
 25 flaws.
 26 And I believe I've read some reports by Professor
 27 Bill Hogan, where he was describing how the California markets
 28 worked, and he said essentially the same thing, that we do not
 0228
 01 have clearing markets, that they have aspects of pay-as-bid
 02 pricing.
 03 And once you have pay-as-bid pricing, you just
 04 don't come in and just bid your cost. You have to actually say,
 05 well, where do I think the market's clearing, and adjust the bid
 06 accordingly.
 07 So, that's what I take this to mean.
 08 MR. SCHREIBER: I'd just like to add, if I could,
 09 and excuse me for interrupting.
 10 This was not the interpretation that John Jacobs
 11 took of this letter.
 12 DR. GRIBIK: But that's my interpretation of it.
 13 I mean, the first time I believe I saw this was just before
 14 these hearings.
 15 SENATOR PEACE: Here's what -- in all this time,
 16 over how many months were you dealing with Dr. Backus?
 17 DR. GRIBIK: I only met him a few times, no more
 18 than half a dozen times, I believe.
 19 SENATOR PEACE: Over how many months were you
 20 dealing with him?
 21 DR. GRIBIK: Again, may exchange an e-mail every

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22 now and then, or meet him on occasion.
23 SENATOR PEACE: Over what period of time?
24 DR. GRIBIK: Oh, I'm not sure. Maybe half a
25 year.
26 SENATOR PEACE: And as Senator Bowen noted
27 earlier, Dr. Backus happens to be a prolific writer, I believe
28 was the term.
0229
01 DR. GRIBIK: Yes.
02 SENATOR PEACE: And during that half-year, you
03 never in these exchange of e-mails, or in other exchanges, had
04 an opportunity to have Dr. Backus articulate his views of the
05 marketplace?
06 DR. GRIBIK: I never paid that much attention to
07 his documents because --
08 SENATOR PEACE: There's a remarkably broad group
09 of things you don't pay attention to.
10 DR. GRIBIK: I did not pay that much attention to
11 his documents.
12 SENATOR PEACE: I mean, here's a guy whom you're
13 recommending to Perot Systems that they be in partnership with.
14 DR. GRIBIK: At the very beginning.
15 SENATOR PEACE: Did you ever recommend that they
16 not partner with him? That's kind of my point.
17 Is there a point at which you suggested, hey,
18 this guy's got some kind of radical --
19 DR. GRIBIK: Again, I didn't recommend him
20 personally. I thought he had some capabilities which looked
21 good. I thought his software package looked very interesting.
22 Him personally, I did not know him.
23 SENATOR PEACE: Was there ever a point at which
24 you recommended that Perot not do business with Dr. Backus?
25 DR. GRIBIK: I don't believe so.
26 SENATOR PEACE: Was there ever a point in which
27 you saw any revelation of his views of gaming, and the market,
28 and this inevitable evolution of the marketplace that created
0230
01 concern?
02 I mean, there are documents here that have
03 Perot's logo on it which actually run through a series of what
04 is referred to as "the inevitable cycle" that leads to
05 re-regulation.
06 You saw those documents; did you not?
07 DR. GRIBIK: I saw those, and --
08 SENATOR PEACE: And who prepared those documents?
09 DR. GRIBIK: Dr. Backus did, because he studied
10 deregulation in other --
11 SENATOR PEACE: But with Perot Systems' logo on
12 the --
13 DR. GRIBIK: But he prepared those based on his
14 knowledge of how other deregulated markets had evolved.
15 I had no knowledge of that. He was the expert,
16 and I deferred to him on that.
17 SENATOR PEACE: And you're saying that Perot
18 Systems allows their logo to be expropriated onto documents
19 that are prepared for presentation to third parties without
20 permission?
21 DR. GRIBIK: I'm not the person who makes the
22 decision on who to partner with. I was a technical person. I
23 was not the one who was arranging the sales calls.
24 SENATOR PEACE: Who was?
25 DR. GRIBIK: Again, I would -- speculation, it
26 would be Hemant Lall or Ed Smith.
27 I did not arrange these sales presentations.

28 SENATOR PEACE: But during the six months of
0231
01 association, admittedly, apparently, fairly minimal association,
02 nothing ever -- nothing struck you as untoward or discomforted
03 you in any way? There was never a point where you felt, gee,
04 maybe we're getting hooked up with a guy that's kind of sleazy?
05 DR. GRIBIK: My take on him, to be frank, was
06 that he was a bit a blow-hard. I looked at a lot of his stuff
07 as being total puffery.
08 SENATOR PEACE: How many other blow-hards have
09 you engaged in business partnerships with?
10 DR. GRIBIK: I -- I didn't engage in a business
11 partnership with him.
12 SENATOR PEACE: Well, you proposed to Perot
13 Systems that they be involved with this blow-hard. Were there
14 any other blow-hards that --
15 DR. GRIBIK: I did not propose that they be
16 involved with him.
17 SENATOR PEACE: That's not my word, Counselor,
18 with all due respect. You suggested to him that he use the
19 word. He used it, and you've got to live with your
20 recommendation.
21 MR. ARONICA: No, Senator, that is a
22 misstatement, Senator.
23 SENATOR PEACE: I guess I read your lips
24 incorrectly.
25 MR. ARONICA: Well, you obviously did.
26 CHAIRMAN DUNN: Okay, hold on, folks.
27 Senator Peace.
28 SENATOR PEACE: You thought he was blow-hard.
0232
01 DR. GRIBIK: I thought --
02 SENATOR PEACE: And you didn't tell me you now
03 believe him to be a blow-hard. You said you thought him at the
04 time to be a blow-hard.
05 Why were you doing business with him?
06 DR. GRIBIK: I thought he had a very useful
07 software package which we could make -- which would make a very
08 good --
09 SENATOR PEACE: Which would make --
10 DR. GRIBIK: -- which would make a very good base
11 for strategic evaluation --
12 SENATOR PEACE: To make money off of.
13 DR. GRIBIK: Well, yeah. We would make money by
14 selling a service where we could develop a strategic evaluation
15 package.
16 SENATOR PEACE: So, despite the fact that you
17 viewed him as a blow-hard, my word now, a bit of a charlatan, a
18 guy who tended to exaggerate, if you could figure a way to make
19 money off of an association with him, that would be okay?
20 DR. GRIBIK: No, I thought that he was eminently
21 controllable. I thought -- I thought he overstated things
22 frequently.
23 SENATOR PEACE: Did you ever intervene in the
24 preparation of any of these documents or these presentations and
25 say, "Now wait a minute. Maybe we shouldn't be saying this.
26 You're not authorized to say that," or "That's an
27 overstatement."
28 Did you ever express discomfort with these
0233
01 documents that you thought to have -- that as a consequence of
02 their preparation led you to the conclusion that he was a
03 blow-hard?
04 DR. GRIBIK: I -- I didn't see all of the

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05 documents. And as far as I know, none of them were presented.
06 I don't recall any of these being presented to anyone.

07 SENATOR PEACE: Here's these documents. You knew
08 there were proposals to be made to PG&E, to Edison, to SDG&E;
09 proposals to make presentation to Enron. We don't know how
10 many.

11 We do know that there's a contemporaneous
12 document in which Ed Smith, I believe, confirms there were more
13 presentations other than the SDG&E, simply by saying he will not
14 agree to reveal them to the ISO when Tranen -- I know, Counsel,
15 I'm supposed to say that's not an admission that --

16 MR. ARONICA: Senator, we never saw that
17 document. Where is that document?

18 CHAIRMAN DUNN: Chris, would you pull that.

19 MR. ARONICA: Regarding Ed Smith.

20 SENATOR PEACE: While he's getting that, so we
21 know there were at least preparations made for presentations.

22 You're telling me that -- which is news to me --
23 that during this period of time, you believed this gentleman to
24 have been of the sort that would overrepresent his or perhaps
25 your qualifications as well as the company's qualifications, and
26 you never stepped in to stop it?

27 DR. GRIBIK: I thought there was some puffery. I
28 did not think that he was making contractual claims or anything.

0234 01 I thought he was just trying to make it sound as large as
02 possible, make it sound good.

03 SENATOR PEACE: So, did he overrepresent your
04 credentials?

05 DR. GRIBIK: Well, I didn't have thousands of
06 holes, or anything like that.

07 I think he overstated things.

08 All I was there for was to give my technical
09 opinion -- or technical support during the presentations,
10 describing the structure of the California markets, saying how
11 the various pieces fit together. That's what I tried to do.

12 SENATOR PEACE: Did you find that document?

13 MR. SCHREIBER: I have the Ed Smith letter to
14 Rich Davis.

15 CHAIRMAN DUNN: The question is, if I recall
16 correctly, where Perot Systems refused to identify who they had
17 marketed any presentation in the fall, when the issue arose in
18 the fall.

19 MR. ARONICA: I think the Senator was referring
20 to a letter by Ed Smith.

21 MR. SCHREIBER: It's Ron Nash, actually.

22 DR. GRIBIK: My guess is that he was referring to
23 Edison and PG&E.

24 Again, I did not go to PG&E as far as I can
25 recall.

26 CHAIRMAN DUNN: Hold on one second, everybody.

27 MR. SCHREIBER: The document is the October 26th
28 letter from Ron Nash to the ISO.

0235 01 SENATOR PEACE: There's also the November 26,
02 1997 letter from Charles Bell to Perot Systems. It says,

03 "In response to Mr. Tranen's
04 inquiry, Perot Systems has made
05 presentations regarding our
06 consulting capabilities with
07 respect to California market
08 restructuring to three potential
09 market participants, in addition
10 to related presentations made to

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the ISO and the California Power Exchange. Of these three companies, two declined to reveal their identities under the terms of our nondisclosure agreements. The remaining company is San Diego Gas and Electric and its parent, Energy Pacific, which has informed the ISO of our confidential discussions."

MR. ARONICA: If that's what you're referring to.

SENATOR PEACE: My only point here is, more than one package was prepared for presentation.

DR. GRIBIK: Yes.

SENATOR PEACE: By, presumably, an individual whom you had concerns about his veracity.

DR. GRIBIK: Well, what I was -- what I was

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interested in him for -- and my background was technical. I thought he had very useful technical material.

I'm not the Perot Systems salesman. Hemant Lall and Ed Smith were more the sales people. I just --

SENATOR PEACE: But with all due respect, it's not like he was just exaggerating by overstating his degrees in college. He was actually advocating aggressive, in his words, unethical and borderline illegal tactics.

And he also had a view. His views were so extreme that he believed that it was part of his mission to destroy the market. And he articulates this.

You've seen the documents, and none of the bothered you?

DR. GRIBIK: I've just seen this one now. I did not see this one before.

SENATOR PEACE: Does that concern you now? Do you have a higher level of concern as you've seen more of these documents?

DR. GRIBIK: I don't like this letter. I would not have written this. I don't think anyone at Perot Systems should have written this. I can say that. I do not like it.

If I had seen this, I would have --

SENATOR PEACE: It would have fallen under your category of inappropriate?

DR. GRIBIK: Well, I don't like the letter. I can't say precisely what he was saying in here.

SENATOR PEACE: I understand.

DR. GRIBIK: You can ask him

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But again, I'm not sure he was saying destroy the market. I can read it another way. I would tend to give --

SENATOR PEACE: No, no. He articulates this in some of his other documents, that there's, in his words, an end that justifies the means.

It's a view shared by many academics that the only market that truly will work is when you get all the government rules and stuff out of the way.

And he and the guy who did the consulting for the auditor, Cicchetti, are a couple of the more whacko advocates of that extreme view.

It's the same exact view that the Marxists articulated, that you have to go and destroy everything before you can then finally build Nirvana. The only difference is that the Marxist's notion of where the end is was just the opposite of what these nut cakes' view of the end is.

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I find it remarkable that you all were in partnership with this guy, and many other companies throughout the country went into partnership with these academic types who, I think, actually believe this stuff. And just otherwise very intelligent business people just walked right down the primrose path and took an entire country's economy down the tubes with you.

CHAIRMAN DUNN: Okay.

Mr. Drivon, you have a few follow-up.

We are coming, Mr. Shirmohammadi.

MR. DRIVON: Could I have 357, please.

CHAIRMAN DUNN: Tab 9.

MR. DRIVON: Mr. Gribik, you have indicated that you may have participated in making some examples, particularly of things that had already been plugged with respect to games that might be played.

If I could have the second paragraph from the bottom, please. This is a draft of a proposal to Enron, February the 16th, 1998, prepared by Perot Systems in partnership with Backus' group.

"Employees of Enron, PSC and PAC will use specific examples of gaps in the California market protocols seen to offer opportunities for market optimization. This joint team is led by Paul Gribik,"

and some others,

"... will closely examine three concrete California market examples previously verified by PSC within the California Power Exchange/Independent System Operator as valid illustrations of market 'gaps'."

Are you talking about things that have been closed or things that provide a present opportunity?

DR. GRIBIK: I didn't write this proposal.

My assumption, when they're talking about three concrete examples, were the three that I had closed, that I had

informed the ISO and PX about, and which they had closed

MR. DRIVON: Well, this document says that you, Mr. Lall, and Ed Smith of PSC, together with George Backus, are leading this team; correct?

DR. GRIBIK: Well, if they got the job, they were saying they wanted me to work on it.

MR. DRIVON: It uses the words, "led by Paul Gribik." Do you see that phrase? "Led by Paul Gribik."

MR. ARONICA: I think if you read the rest of it, it says Hemant Lall and --

MR. DRIVON: I just covered that, Counsel.

MR. ARONICA: -- Ed Smith and George Backus.

MR. DRIVON: I just covered that.

DR. GRIBIK: But again, it's -- there was no effort at this time. We had no contract.

This is -- I believe that they're saying, if they got a contract, they would -- they would have wanted me to be removed from the PX account and go to this.

MR. DRIVON: At the top of this it says, and it's up there on the screen in big, so everybody can see it. It's prepared by Perot Systems in partnership with Policy Assessment.

So, who prepared this document?

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23 DR. GRIBIK: First of all, it was a draft.
24 Secondly, I did not prepare it.
25 MR. DRIVON: Who prepared it?
26 DR. GRIBIK: I don't know.
27 MR. DRIVON: Was it Hemant Lall or Ed Smith?
28 DR. GRIBIK: That would be pure speculation.

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01 MR. DRIVON: Okay. And in the sentence of what we
02 have down there,
03 "Employees of Enron, PSC and
04 PAC will use specific examples
05 of gaps in the California market
06 protocols seen to offer
07 opportunities for market
08 optimization."
09 Isn't that talking about gaps in the market
10 protocols that then currently, contemporaneous with this
11 document, were seen to offer opportunities?
12 DR. GRIBIK: I had no knowledge of three gaps
13 that were not closed.
14 The only three I knew at that time were the ones
15 which I had notified the ISO and PX about. I think that's what
16 they were referring to.
17 I didn't draft the document. I assume that
18 that's what they're referring to.
19 MR. DRIVON: So, if a hole has been plugged, or a
20 gap has been closed, it would not then in the future offer
21 opportunity for market optimization; would it?
22 DR. GRIBIK: No, it wouldn't.
23 MR. DRIVON: Is this just poor drafting, or am I
24 totally misunderstanding what's meant here?
25 DR. GRIBIK: I'm not sure. I didn't draft this.
26 MR. DRIVON: When the proposal was made to the
27 California PX, you again talked about simply taking existing
28 public protocols and working with those.

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01 If I could have 10056, please, August 31st of
02 1999, the first half of last paragraph.
03 CHAIRMAN DUNN: The August, '99, PX proposal.
04 There's two PX proposals. I want to make sure
05 that the one that's in the tab is the one that Mr. Drivon is
06 referring to at this time.
07 Tab 26 is where the PX proposal is. Is it the
08 same one? That's the one, that tab.
09 MR. DRIVON: It's Page 12 of the proposal.
10 In the bottom left-hand corner it says, "Perot
11 Systems Confidential."
12 CHAIRMAN DUNN: Typewritten.
13 MR. DRIVON: [Reading text]
14 "Perot Systems has been a key
15 player in both the design and
16 implementation of California's
17 restructured energy market."
18 Do you agree with that?
19 DR. GRIBIK: I know we definitely did a lot of
20 implementation work on it. I don't think we did all that much
21 design work.
22 MR. DRIVON: Well, this was part of a proposal.
23 It had nothing to do with Dr. Backus. It was a proposal in
24 1999, after the market had opened and been running for close to
25 a year-and-a-half, to the California PX. And it says,
26 "Perot Systems has been a key
27 player in both the design and
28 implementation of the

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01 restructured energy market."
 02 Is that an exaggeration of Perot's involvement?
 03 DR. GRIBIK: Well, let's see. I think that the
 04 next sentence,
 05 "To start, we designed many of
 06 the business protocols that
 07 formed the foundation of today's
 08 energy market in California,"
 09 is a misstatement.

10 MR. DRIVON: I was going to get to that. So,
 11 that one's a misstatement.

12 DR. GRIBIK: But then it says,
 13 "We then played a pivotal role
 14 in the timely and successful
 15 start of both the California
 16 ISO and CalPX. As many CalPX
 17 veterans are aware, we are
 18 credited for removing the last
 19 major hurdles for the start of
 20 the California PX market on
 21 4/1/98."

22 So, I think that what they were talking about is,
 23 we got the last bits of the impediments out of the way so the
 24 market could start.

25 I don't view that we designed the protocols. I
 26 think that was an overstatement or a misstatement.

27 I didn't draft this. I would not have said that.
 28 MR. DRIVON: You were here before when I was

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01 going through some of these when Mr. Perot was here. You
 02 recognized that there were a number of documents that were
 03 referred to by various authors that talked about Perot Systems
 04 and you having been instrumental in designing the business
 05 protocols.

06 DR. GRIBIK: The one area where I had input into
 07 the formulation of the protocols was the formulation of the
 08 congestion management process as an optimal power flow problem,
 09 similar to that used in the eastern ISOs.

10 And they did not take all of my suggestions on
 11 that. They took a part of what I produced and wrote the
 12 protocols around it.

13 I gave them a mathematical formulation.

14 MR. DRIVON: When this says -- and I know.
 15 You're talking market separation approach to congestion
 16 management.

17 DR. GRIBIK: Yes, that is basically what's used
 18 in the eastern ISOs in many respects.

19 MR. DRIVON: So, when whoever it was at Perot
 20 that wrote this proposal to the PX stated, in an attempt, I
 21 guess, to get the business, that Perot had designed many of the
 22 business protocols, that was either inaccurate or puffing?

23 DR. GRIBIK: Well, the only -- like I said, the
 24 only part which I had worked on, and which I told the committee
 25 about, was advising on the formulation of the congestion
 26 management problem, which was then incorporated in the
 27 protocols.

28 Not all of what I formulated was incorporated;

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01 part of it.

02 I didn't write this. I don't know who wrote it.
 03 I don't know if there were other people maybe who did something.

04 I -- all I can say is, I worked in one aspect
 05 related to the protocols, and that was the formulation of the

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06 congestion management problem as an optimization problem.
07 MR. DRIVON: You don't know whether they may be
08 referring to other Perot Systems folks who developed many of the
09 protocols?
10 DR. GRIBIK: I don't think there were Perot
11 people that developed many. I think that's an error.
12 MR. DRIVON: Well, I can understand an error
13 being made.
14 Can we see 10057, please.
15 CHAIRMAN DUNN: It should be the next page.
16 MR. DRIVON: Blow up the first paragraph.
17 DR. GRIBIK: Yeah. I mean, looking at it, we're
18 not sure if this is even the final document. I never -- I never
19 reviewed this document at the time, so I can't say what's in
20 somebody's mind.
21 MR. DRIVON: The next page, the last full
22 sentence in that paragraph says,
23 "For a majority of these
24 contributions we,"
25 that's Perot,
26 "were the main party responsible
27 for developing and deploying the
28 needed business protocols and
0245 information systems."
01 That would also be inaccurate?
02 DR. GRIBIK: No. I think that there is a
03 difference here at this point now. We're talking 1999. These
04 marketing efforts stopped, ceased, in early '98.
05 Afterwards, Perot Systems did give the Power
06 Exchange in, I believe, late '98, help in formulating their
07 block forward market and several other things, writing the
08 systems for those.
09 But by that point, our efforts to market
10 strategic services to market participants had ceased. We had
11 had absolutely no success. We stopped, and I believe we focused
12 on the CalPX.
13 At that time, once we had ceased that work, I
14 believe we did do some work on their block forward markets, and
15 a bookout process, and a few other things.
16 So, there was a transition after ceasing to work
17 more closely with the CalPX. That may be what they're referring
18 to.
19 Again, I didn't write this. I'm not sure.
20 MR. DRIVON: Let's go back to Chart 1, please.
21 MR. ARONICA: Is that the preceding page?
22 MR. DRIVON: No, it's a chart, what we looked at
23 before.
24 MR. ARONICA: Which document is that from?
25 CHAIRMAN DUNN: It's under 31. We had this up
26 before.
27 MR. ARONICA: It appears that 31 is not a
0246 complete document; is it? Or are there just certain pages out
01 of it?
02 CHAIRMAN DUNN: That is correct.
03 MS. MONTGOMERY: They are part of various
04 presentations.
05 MR. ARONICA: Different presentations.
06 CHAIRMAN DUNN: Correct.
07 MR. ARONICA: So, they would include some of the
08 Backus presentations that may or may not have been made, and
09 Mr. Gribik's presentations that may or may not have been made?
10 MR. DRIVON: They involve documentation with
11

respect to either presentations or proposed presentations that were provided to us by Perot Systems.

And we have we done our best to figure out what those documents were, they came from, and what they mean.

If you're confused about them, maybe Perot can help you.

MR. ARONICA: I'm just trying to figure out what's in 31, but that's a conglomeration of different pages of various presentations?

CHAIRMAN DUNN: Yes. They're separated by blue pages as to the different proposals. Not merged together, but they are parts of separate presentations.

MR. DRIVON: What I want to do, Mr. Gribik, is look at the first bullet point,

"Put Big Generation Online Early
So Other Generators Can't Get on
Degraded Transmission System."

Would this be an appropriate game to play?

DR. GRIBIK: I believe what he's talking about here is something that was observed in the UK.

MR. DRIVON: Would this be an appropriate game to play in the California market?

DR. GRIBIK: I don't have enough detail to know -- I'm not sure what he means by degraded transmission system. If I want to get my big generation on to sell power, and pay to use the transmission system, if I'm willing to pay the congestion fees to get from my point to another and sell my energy, I don't know if that's inappropriate or not.

I'm not sure what's in his mind here.

MR. DRIVON: Let's to the second bullet point,
"Put on Plant at Below Marginal
Costs to Distort Dispatch and
Make Later Costly Plant
Profitable."

Would that be an appropriate thing to do?

DR. GRIBIK: Again, it sounds to me like he's saying do a lost leader with the first plant, where you you're selling it at below cost. So, I'm not sure how this strategy would work.

MR. DRIVON: You don't know if it would be appropriate or not, because at this point you don't understand what he means here?

DR. GRIBIK: I don't understand in detail what he means. It could be inappropriate, it could be appropriate. I don't know.

MR. DRIVON: We've covered the next bullet point. The fourth bullet point,

"Temporarily Give Capacity
Zero-Rating So LOLP,"

What's LOLP?

DR. GRIBIK: That's what I'm saying. This is specifically from the English markets. We don't have that in California.

MR. DRIVON: Okay, so not only would it be inappropriate, it'd be impossible?

DR. GRIBIK: Exactly. We have no LOLP price. That's why I'm saying, when I'm reading this, I'm very confused.

MR. DRIVON: The next is,
"Double Book Transmission &
Generation Capacity Firm &
Spot With Options"

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18 Is that a game that can be played in California?
19 It's the one right under "LOLP."
20 DR. GRIBIK: We're looking at the wrong thing, I
21 guess.
22 Again, in the California markets, I don't know
23 how you double-book generation, because you schedule the
24 generation through an SC. The ISO has your generation
25 capability. Only one SC can represent a generator. There is no
26 way that you can double-book the generation as far as I know.
27 This does not make sense to me.
28 CHAIRMAN DUNN: It is a different one, but the
0249
01 same material is on that, just in a different order. You'll see
02 double-book on the one that you have. Yes, you will, Counsel.
03 MR. ARONICA: Thank you.
04 MR. DRIVON: The next one on this is,
05 "Make Minimum Load Equal Full
06 Capacity."
07 DR. GRIBIK: Again, I don't think that's possible
08 in California because you have to register the physical
09 capability of your plant with the ISO. There is -- I believe
10 the ISO actually had test procedures in place to make sure that
11 they had the correct capabilities in place.
12 This sounds to me like some other market. I
13 don't see how this could be done in California.
14 MR. DRIVON: How about,
15 "Base Load Outage Ancillary
16 Service Generation."
17 DR. GRIBIK: Again --
18 MR. DRIVON: Does that make any sense in the
19 California market?
20 DR. GRIBIK: Well, as far as I know, you just bid
21 into the PX. There was no such thing as base load generation.
22 If -- if you're talking about having a phantom
23 outage, I'd say that's inappropriate, but I'm not sure, again,
24 what he's talking about.
25 MR. DRIVON: Several of these bullet points you
26 identify as things that basically have no application to
27 California.
28 DR. GRIBIK: As far as I know.
0250
01 MR. DRIVON: Why would they be in a presentation
02 that was intended for somebody who was going to market energy in
03 California?
04 DR. GRIBIK: [No response.]
05 MR. DRIVON: Either as a game that, you know, is
06 an example of a game, or is a game that might be played?
07 DR. GRIBIK: I think he was saying, this is the
08 kind of things that we're seeing in energy markets throughout
09 the world, that gaming was -- that strategic playing was rampant
10 in these markets.
11 Again, I never heard him deliver this
12 presentation, so I have a very hard time knowing what these
13 talking points were about.
14 MR. DRIVON: Do you know who Rich Davis is?
15 DR. GRIBIK: I believe he's a vice president at
16 Enron.
17 MR. DRIVON: Ed Smith, of course, is Perot
18 Systems, former Perot Systems person?
19 DR. GRIBIK: Yes.
20 MR. DRIVON: If we could have 353, please.
21 CHAIRMAN DUNN: This is the April '98 letter.
22 MR. ARONICA: Do we have a tab on that?
23 MR. SCHREIBER: Tab 8.

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MR. DRIVON: Under Question 1 A., these appear to be, or at least it indicates, that these are answers to questions that were posed by Mr. Davis at Enron sometime before April 8th of '98.

And further, at the top of the document it says,

"George and I wanted to engage Paul's thoughts in the illustrations we've included."

Do you remember being engaged by Mr. Smith and George Backus concerning your thoughts on the illustrations set forth in this letter?

DR. GRIBIK: I don't recall that. I recall discussing with George and possibly Ed the -- the problems that I notified the ISO and PX about and which were corrected. I don't recall discussing any other strategies with them.

MR. DRIVON: Do you recall, under Question 1 A., discussing with them that there was an overabundance of strategy categories, ranging from just playing the gaps in the protocols to taking advantage of self-created congestion?

DR. GRIBIK: That I would not have written because at the time I had no knowledge of an overabundance of gaps. I would not have said that I know about lots of gaps when I didn't know about them.

The only ones I knew were the three that I had closed, and, as I as mentioned earlier, the problems arising from running 24 separate independent hours in the energy market, that we were not coming up with physically feasible schedules. Those were the gaps that I knew of.

MR. DRIVON: Were you aware of games that could be played in California market at that time to take advantage of self-created congestion?

DR. GRIBIK: No. In fact, I don't know how somebody would take advantage of self-created congestion,

because as I told people many times, California does not pay you to remove congestion. You pay to use congested lines.

This to me sounds like what was happening in the

UK.

So, I don't know. Again, I'm not sure what it means.

MR. DRIVON: Do you have any knowledge that Mr. Smith knows anything about what was going on in the UK?

DR. GRIBIK: Yes. He was in the UK. He worked over there with EME.

MR. DRIVON: But this sentence isn't talking about what happened in the UK; is it? It's talking about things in the present tense in California.

DR. GRIBIK: Yes, and again, I don't know about these opportunities. I don't know if they are saying, by extension we believe we can take things that we observed over there and bring it over here and investigate them. I don't know. I didn't draft this.

MR. DRIVON: Farther down, there's a sentence that says,

"... may actually serve to create opportunities rather than [just] wait for them."

Part of a sentence, three or four lines down.

SENATOR PEACE: I'd like to read that whole sentence,

"While the trading floor can unilaterally take advantage of

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market 'opportunities' as they arise, a broader strategy involving other parts of Enron (or PGE) along with possibly allies in other energy supply or delivery organizations may actually serve to create opportunities rather than wait for them."

Then we later saw where Enron did exactly that, with LA Water and Power, to mention one other Perot client.

DR. GRIBIK: Again, I have no --

MR. DRIVON: Let me ask the question.

Were you aware that Perot Systems, through Mr. Smith, was suggesting to Mr. Davis at Enron in April of 1998 that Enron might engage in these sorts of activities as suggested in this letter?

DR. GRIBIK: I'm not even -- whenever I read this, I -- there's not a sufficient detail for me to say how one would even do this. So, I'm not sure what he was --

MR. DRIVON: The next sentence, does it seem to you to be defensive strategy displayed by the next sentence, which says,

"The trick is having a view of where and how these opportunities should be targeted."

I mean, targeting an opportunity is an offensive strategy; isn't it?

DR. GRIBIK: Well, there are things that you could do to make profits. That may be what he's referring to. Again, I did not draft this.

MR. DRIVON: Such as taking advantage of self-created congestion?

DR. GRIBIK: Again, as I said before, I'm not sure how that -- that particular strategy would work.

MR. DRIVON: Then it says,

"Focusing on actual California protocol gaps, a few examples may assist in illustrating these points."

Then it talks about the old rules; right?

DR. GRIBIK: This was one of the ones that I had the ISO correct. I alerted them to it, participated in their market -- market member process, where we discussed this stuff, and convinced them that the way they were going to set the default usage charge whenever they ran out of adjustment bids would lead to people not submitting adjustment bids; that there was -- the way they were going to set the price, people would know if the price was going to be set very low the day before. Once that happened, people would not submit adjustment bids. It would turn into something like the gas transportation market, where people overnominate the pipelines.

I discussed that with the ISO, discussed that with their market participants in public meetings, public conference calls, and that was changed.

That's what he's describing here.

SENATOR PEACE: Before we go off of this, didn't Mr. Perot testify that all of these documents, and all these presentations, and didn't you in your written testimony testify, that it all had to do with presentations that were associated with the proposed market rules before they were improved and before the market opened?

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07 DR. GRIBIK: No, what I said --.
08 SENATOR PEACE: I believe your written testimony,
09 and I'm not talking about --
10 DR. GRIBIK: I said one I wrote --
11 SENATOR PEACE: I'm talking about did you not in
12 your written testimony contend that all of these issues had to
13 do with things that were potentially at issue, and had gotten
14 taken care of before the market went on? Therefore, nobody
15 could have taken advantage of these things because the gaps had
16 already been closed; correct?
17 DR. GRIBIK: I was talking about the
18 presentations which I prepared, particularly the 44-page one.
19 SENATOR PEACE: As it refers to this, this is
20 clearly referencing the market after those changes had been
21 engaged; is it not?
22 I believe in your explanation you --
23 DR. GRIBIK: Yes, the date is after the market
24 opened.
25 SENATOR PEACE: Right. And it's also making
26 reference to the old protocols, and then the changes the ISO's
27 made. So, we're already in at least a second generation of ISO
28 rules here.
0256
01 Which also leads me to be somewhat confused by
02 your perception that the previous paragraph is making reference
03 to some experience in England, when in fact all of the
04 specifics, the two bullet points coming after, are all
05 specifically referencing California.
06 DR. GRIBIK: These were the ones -- these were
07 problems which I discussed with the ISO and the PX and had
08 repaired. They are things --
09 SENATOR PEACE: But Mr. Smith is here -- I'm just
10 asking you -- you can read this letter. I mean, any reasonable
11 person reading this letter would recognize that Mr. Smith is
12 responding to specific questions. There's obviously been either
13 a meeting, or a dialogue or some sort that occurred before.
14 Enron has posed questions as to how Perot can help. And Perot
15 responds via Mr. Smith's letter in saying, "Here's the ways we
16 can help."
17 And one of the ways he's suggesting we can help
18 is, we can help you working with other market participants to
19 manipulate the market.
20 Isn't that what this says?
21 MR. ARONICA: This letter has a PSC-PAC. That
22 would indicate that came from PAC, written by Mr. Backus.
23 I think that's the way your numbering system
24 works. And it appears to be an unsigned --
25 CHAIRMAN DUNN: Hold it.
26 MR. DRIVON: It's not our numbering system.
27 CHAIRMAN DUNN: Was it produced by Perot Systems?
28 MR. SANDERS: Produced by Perot as part of the
0257
01 documents they received from PAC in connect with this
02 investigation.
03 MR. SCHREIBER: Which is not to say that it
04 wasn't written by Perot. It was just given to you by George
05 Backus.
06 MR. ARONICA: Well, it doesn't say that it was
07 written by Perot, nor is it a signed letter.
08 Is there a signed letter?
09 CHAIRMAN DUNN: Chris, do we have a copy of a
10 signed letter?
11 MR. SCHREIBER: We don't have a signed letter,
12 but I have no reason to believe that it wasn't -- I mean, if it

13 was produced off a computer hard drive, my expectation is that
 14 it wouldn't be signed.
 15 MR. ARONICA: Do you know that this was sent?
 16 That's my question.
 17 SENATOR PEACE: Counselor, let me ask you this.
 18 Are you asserting that it wasn't sent?
 19 MR. ARONICA: I don't know.
 20 SENATOR PEACE: Are you asserting that it wasn't
 21 prepared by --
 22 MR. ARONICA: My question --
 23 SENATOR PEACE: It's just that you don't
 24 know.
 25 MR. ARONICA: Correct.
 26 SENATOR PEACE: Would you find that out for us?
 27 MR. ARONICA: I will ask. But I can only assume
 28 that if you've requested documents from people --
 0258
 01 SENATOR PEACE: Right. And you're going to find
 02 that out for us. So now we have that taken care of.
 03 Now, on the assumption that we later learn that
 04 this, in fact, was a letter from Mr. Smith, can you give me any
 05 reasonable interpretation, other than this letter solicits Enron
 06 to participate with its affiliates and, indeed, with other
 07 companies in the marketplace to manipulate the market?
 08 DR. GRIBIK: I didn't write the letter. I didn't
 09 send the letter.
 10 SENATOR PEACE: I understand that. But now that
 11 you've read the letter, is that not what this letter -- we may
 12 find that it's a forgery.
 13 MR. ARONICA: I think the letter speaks for
 14 itself.
 15 CHAIRMAN DUNN: Counsel, come on. You know
 16 better. We're not a court room, Counsel.
 17 Mr. Gribik.
 18 DR. GRIBIK: Since I didn't write it, I would --
 19 SENATOR PEACE: Okay, you just received it. What
 20 do you interpret it to mean?
 21 DR. GRIBIK: [No response.]
 22 SENATOR PEACE: When he is says,
 23 "While the trading floor can
 24 unilaterally take advantage of
 25 market 'opportunities' as they
 26 arise, a broader strategy
 27 involving other parts of
 28 Enron"
 0259
 01 MR. ARONICA: Senator, he's got to take the time
 02 to read the entire letter. You've asked him what he thinks of
 03 the letter.
 04 SENATOR PEACE: Okay, it works for me.
 05 CHAIRMAN DUNN: We're going to take five minutes
 06 to give Evelyn time to take a rest of the fingers. Five
 07 minutes.
 08 [Thereupon a brief recess
 09 was taken.]
 10 CHAIRMAN DUNN: Just so everybody knows, here's
 11 what we're going to do, because I know that everybody's looking
 12 at, wait a minute, there's a few more panels. It's 20 after
 13 5:00, and are we going to be here until 20 after 5:00 tomorrow
 14 morning. No.
 15 I believe, actually we are finished with
 16 Mr. Gribik. No, I'm sorry, my mistake. We do have a few
 17 follow-up. I said that two hours ago, I understand.
 18 And then, despite my promise to

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19 Mr. Shirmohammadi, that we would start with him within a few
20 minutes, we actually will be doing that here.
21 Then we're going to quickly go to -- I believe
22 we're trying to resolve the issue. We've got Terry out there.
23 I think we've got basically one question for Terry. We're going
24 to do that very quickly.
25 We're going to turn to the Edison folks at that
26 point in time, and wrap them up, and finish with Eric at the
27 end.
28 I've talked to the committee members.

0260
01 Everybody's going to stay focused. We think we can actually get
02 this done relatively quickly.
03 Of course, I shouldn't say that, given my
04 history.
05 Senator Morrow.
06 SENATOR MORROW: Thank you.
07 Mr. Gribik, just a few follow-up questions.
08 You indicated that you weren't involved in the
09 United Kingdom energy market yourself, and that was before you
10 were in Perot. I think it was around '94, '95 timeframe.
11 To your knowledge, though, Perot Systems was
12 involved in the United Kingdom energy market; correct?
13 DR. GRIBIK: I believe they were. Yes, they had
14 at least one account there.
15 SENATOR MORROW: Can you tell us, do you have
16 knowledge whether or not they had any business relationships
17 with Policy Assessment Corporation or Dr. Backus in the United
18 Kingdom?
19 DR. GRIBIK: No idea.
20 SENATOR MORROW: I think you indicated Mr. Smith,
21 Ed Smith --
22 DR. GRIBIK: Yes.
23 SENATOR MORROW: -- from Perot Systems was
24 involved in the United Kingdom accounts. Did I catch that
25 right?
26 DR. GRIBIK: I believe he was involved there.
27 I'm not sure what his involvement was. And I believe Hemant
28 Lall also was involved there.

0261
01 SENATOR MORROW: Was he with Perot Systems at the
02 time?
03 DR. GRIBIK: Yes.
04 SENATOR MORROW: Was he involved -- I thought you
05 said something, it went real quick, EME.
06 DR. GRIBIK: East Midlands Electricity. Sorry
07 about that.
08 SENATOR MORROW: No sweat.
09 One other question. Do you know whether or not
10 with regard to the proposal of Perot and Policy Assessment, do
11 you know whether or not Edison was requiring or wanted an
12 exclusivity clause?
13 DR. GRIBIK: I had no negotiations with Edison.
14 I was just on site.
15 SENATOR MORROW: My question is, do you know
16 whether or not they wanted, or do you have knowledge if whether
17 or not Edison desired an exclusivity clause?
18 DR. GRIBIK: Sorry. I wasn't sufficiently clear.
19 I don't know what was negotiated with Edison.
20 SENATOR MORROW: So, you had no knowledge at all
21 whether or not they desired some exclusivity clause?
22 DR. GRIBIK: I don't know if they asked for one.
23 I think -- I don't think I ever saw anything about it. I don't
24 recall.

25 SENATOR MORROW: Or heard, or in your discussions
 26 with anyone?
 27 DR. GRIBIK: There may have been some comment
 28 that Edison might want one, but I don't know if I was told that
 0262
 01 Edison had requested one. It might be that people thought they
 02 might want one.
 03 SENATOR MORROW: Would it surprise you to learn
 04 that they wanted one?
 05 DR. GRIBIK: No, I don't think it would surprise
 06 me to learn that.
 07 SENATOR MORROW: Why not?
 08 DR. GRIBIK: To develop strategic policies for
 09 someone in this market, you would have to know very, very much
 10 about their resource mix, their -- say their gas contracts, the
 11 fire plants if they had any gas-fired left, their long-term
 12 energy contracts. You'd have to know a lot of very, very
 13 detailed information which would be extremely proprietary.
 14 So, it would not surprise me.
 15 SENATOR MORROW: Earlier, I gathered the general
 16 gist of much of your testimony was dealing with all these issues
 17 of holes in the system, and plugging them, and unplugging them,
 18 that it really all revolved around the idea that Edison, or any
 19 other company, would want to know how the system could be used
 20 against them on defense, as it were.
 21 Am I incorrect?
 22 DR. GRIBIK: No. I think that -- I thought that
 23 was one of the big items that would be of interest in California
 24 in the new market, that defense would be very big. And also
 25 finding profit would also be of interest, but my guess was
 26 defense was important to Edison, just my guess.
 27 SENATOR MORROW: But you're not excluding that
 28 the other interest, of course, was to maximize profits on the
 0263
 01 other end; right?
 02 DR. GRIBIK: No, I think that they would want to
 03 maximize profit -- or, well, I shouldn't say maximize profits.
 04 They would want to get a good balance between
 05 profit and risk, because maximizing profit when you're taking
 06 out acceptable risk might not be good.
 07 SENATOR MORROW: I guess here's what I'm
 08 struggling with.
 09 Let's assume for moment at least that Edison was
 10 desirous of an exclusivity clause. I mean, if that were the
 11 case, and if their interests were purely defensive, if you will,
 12 to prevent them being scammed, or, as I think in one of your own
 13 memos, to be pickpocketed, as it were.
 14 I mean, if that was purely their motivation as a
 15 wholesale energy buyer, why would they care whether it be PG&E,
 16 SDG&E, LADWP, if they would be able to protect themselves from
 17 being gamed from the same system, too?
 18 DR. GRIBIK: I would think that we would -- in
 19 order to figure out their vulnerability -- once we knew how
 20 vulnerable they were, and where they were vulnerable, I think
 21 that that would be something that'd be so sensitive that they
 22 wouldn't want us doing anything for anyone else just because
 23 we'd have such sensitive information on their capabilities.
 24 SENATOR MORROW: Thank you.
 25 CHAIRMAN DUNN: Mr. Drivon, do you have one
 26 question? Then I've got one.
 27 MR. DRIVON: Yes.
 28 Mr. Gribik, you pointed out that in these market
 0264
 01 presentations, some of which we've looked at, which may or may

02 not have been made, that the gaming illustrations were basically
03 illustrative of gaps or holes in the system that had been
04 closed.

05 DR. GRIBIK: In my presentations, I only
06 discussed problems which I had alerted the ISO and PX about and
07 which were closed.

08 MR. DRIVON: What would be the purpose for
09 including in a marketing presentation illustrations of games
10 that could no longer be done?

11 DR. GRIBIK: There are a couple reasons I wanted
12 to do that.

13 First of all, I wanted to show people that we
14 knew how this system worked, because we were out there, finding
15 problems and getting them fixed.

16 To tell you the truth, I was very, very proud of
17 having found those problems and having gotten the ISO and the PX
18 to fix them before the market started. Part of it was, I was
19 just proud of what I had done.

20 And secondly, I wanted to show them that we know
21 how this thing works, that it's not a simple process. That you
22 have to know how all these pieces fit together, because these
23 examples -- it was not just looking at one protocol and saying,
24 "There's a problem here in general." It was how several of them
25 interacted. It was the interaction that caused it.

26 And third, I wanted to alert people that it was
27 not the case what I had heard some economic consultants tell
28 people in the WEPEX process. That is, "Oh, because any one of

0265 01 these individual little pieces, we're going to calculate a
02 market clearing price, it's safe."

03 I was trying to tell people, "No, this is very
04 complex. It's really risky. Don't come into this market and
05 expect that the ISO and the PX are going to be able to protect
06 you."

07 I was really concerned that people were going to
08 come into this and get beat up. And I was trying to tell
09 people, "Watch out for yourself. This is risky."

10 And I thought that there was an opportunity for
11 me to get work and for the company to make a profit by helping
12 people with that.

13 CHAIRMAN DUNN: I just have one or two follow-ups
14 here.

15 I want to go to Page 12 of your prepared
16 testimony, Mr. Gribik. As you're locating it, I'll just read
17 the short passage that I want to ask a question or two about.

18 It's toward the bottom, referring to the 44-page
19 document that was found in the Reliant files. It says,

20 "The facts surrounding this
21 document are:"

22 And then the first one states,

23 "As we informed this committee
24 by letter on June 18, 2002, I
25 wrote the 44-page document. I
26 created it after the markets
27 opened in April 1998 in case I
28 or someone else at Perot Systems

0266 01 would need such a presentation
02 for possible future marketing
03 efforts."

04 Here's my question. Did anyone at Perot Systems
05 ask you to prepare that version of a marketing presentation?

06 DR. GRIBIK: I don't recall anyone asking me to
07 do it. It was more my swan song. I was saying, I don't see

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08 anything here. I'll put something aside, memorialize it, so
09 that if anyone asked me for something in the future, I can say,
10 "Here it is; don't bother me anymore," was basically where I was
11 going with that.

12 CHAIRMAN DUNN: Did anyone at Perot Systems at
13 that time know you had prepared that 44-page marketing effort?

14 DR. GRIBIK: I'm not sure.

15 CHAIRMAN DUNN: Again, I'm not referring to a
16 secretary or support staff that may have typed it, et cetera.
17 I'm referring to the Ed Smith, Hemant Lall,

18 Dariush Shirmohammadi.

19 DR. GRIBIK: I'm not sure, because I may have
20 given it to people in Perot Systems. I'm not sure.

21 CHAIRMAN DUNN: And if we wanted to find that
22 out, I understand you're not sure, how would you recommend we go
23 about doing that? Specifically I'm referring to whether in fact
24 you may have given it to other individuals within the Perot
25 Systems entity.

26 DR. GRIBIK: I don't know how. I mean, it's --

27 CHAIRMAN DUNN: Do you have any speculation here,
28 as you look back in your world in Perot Systems, if you had

0267 given it to someone else, who would those likely individuals
02 be?

03 DR. GRIBIK: I might have given it to Ed or
04 Hemant. I might have given it to people working on the ISO or
05 PX accounts, saying, "Here's something in case you need to be
06 able to explain to people how the markets fit together and how
07 risky they are."

08 I could have given it any number of people. I
09 really couldn't say.

10 CHAIRMAN DUNN: To the best of your recollection,
11 after you prepared it, and you may have given it to someone
12 else -- I understand we don't know -- do you have any
13 recollection of, at any later date, doing anything with the
14 44-page presentation?

15 DR. GRIBIK: I don't ever recall standing up and
16 talking to anyone about it, going through it, doing any sort of
17 presentation. So, I have -- I just basically recall sitting
18 down one day, typing it up, and saying, "That's it."

19 CHAIRMAN DUNN: Correct me if I'm wrong, I
20 believe you did state that you were one of the individuals
21 involved with the 115-page presentation to Reliant, I believe it
22 was.

23 DR. GRIBIK: Yes. I wrote that presentation, the
24 115-pager.

25 CHAIRMAN DUNN: And were you also at the actual
26 presentation of that 115-pager?

27 DR. GRIBIK: I delivered that presentation.

28 CHAIRMAN DUNN: All right. Thank you very much.

0268
01 Unless there's any other questions, Senator
02 Bowen.

03 DR. GRIBIK: Just to be clear, that 115-page was
04 a seminar in which I was describing how the markets in
05 California worked. And I went over material that the PX and the
06 ISO, similar material that they used in their training
07 sessions --

08 CHAIRMAN DUNN: I don't mean to cut you off,
09 Mr. Gribik, but I think you went over this before.

10 DR. GRIBIK: Okay. I just wanted to make sure
11 that it was --

12 CHAIRMAN DUNN: I understand. From your
13 perspective, you see a very big distinction between the 44-pager

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14 and the 115-pager.
15 DR. GRIBIK: Yes, I do. One was sales; one
16 was --
17 CHAIRMAN DUNN: Go ahead, Senator Bowen.
18 SENATOR BOWEN: I just have one thing, and it has
19 to do with the thing that turned up in the Reliant files.
20 Do you have any recollection of mailing that via
21 the U.S. Postal Service?
22 DR. GRIBIK: I have no recollection of it at all,
23 Senator. I'm sorry.
24 SENATOR BOWEN: Would it have been more likely
25 that you would have e-mailed it than mailed it?
26 DR. GRIBIK: I don't even think I would have
27 e-mailed it to him because --
28 SENATOR BOWEN: Not to Reliant, but you said you
0269 might have distributed it to any number of people.
01 SENATOR PEACE: Folded it up into a series of
02 paper airplanes?
03 DR. GRIBIK: No, I could have had a printed copy
04 and given somebody a hard copy from our team. I mean, there's
05 any number of things.
06 SENATOR BOWEN: I was just wondering if you had a
07 practice of how you -- I know in my office, certain people tend
08 to use e-mail more; other people, you know, are allergic to the
09 "on" button on the computer, or don't have one at all. People
10 vary widely in how they distribute information.
11 I was curious what your normal practice was?
12 DR. GRIBIK: I would do everything from
13 electronic through paper. So that's why I'm very baffled.
14 SENATOR BOWEN: Does anyone else have access to
15 your computer? Are you the only person who would be able to log
16 into your e-mail account?
17 Would you have support staff, or anyone else, who
18 would have access to your e-mail account?
19 DR. GRIBIK: Well, I would walk around and leave
20 my computer on, and connected to the e-mail system.
21 SENATOR BOWEN: I'll rule out fraud. I mean,
22 somebody could be in my office right now, too, but they'd better
23 not be.
24 DR. GRIBIK: I couldn't say.
25 SENATOR BOWEN: So, you don't know whether you
26 had anybody else authorized to use your e-mail account?
27 DR. GRIBIK: We were sort of satellites, where
0270 we'd be at client sites. And I'm not sure exactly how the
01 support really worked, to be honest.
02 SENATOR BOWEN: Did you keep your own e-mail
03 files, or did you put things in a shared filed folder?
04 DR. GRIBIK: The e-mail files were typically, I
05 believe, kept on an e-mail server somewhere.
06 SENATOR BOWEN: You would have had to log into
07 your own account.
08 I mean, excluding fraudulent activity, or the
09 Sys. Op. deciding to try to see what was on your system, the
10 only way to get into it would have been you logging on, is that
11 correct, into your e-mail account?
12 DR. GRIBIK: Probably, yes. As far as I know.
13 SENATOR BOWEN: So, you didn't expect that
14 somebody else was in your e-mail?
15 DR. GRIBIK: No.
16 SENATOR BOWEN: Okay.
17 CHAIRMAN DUNN: Last question.
18 Are you aware of any presentation by Perot
19

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20 Systems to any market participants in Hawaii in January of
21 2001?
22 DR. GRIBIK: No, and I've never even been in
23 Hawaii, so I --
24 CHAIRMAN DUNN: Not quite the question. Are you
25 aware of any such presentation?
26 DR. GRIBIK: No. I'm saying, I don't know of
27 any, and there's no way I could have given one, Senator.
28 SENATOR MORROW: One quick one.
0271
01 Mr. Gribik, are you aware or do you have any
02 knowledge of anybody from Perot Systems having any discussions
03 regarding the subject of market gaming strategies with anyone
04 from LADWP?
05 DR. GRIBIK: No. I know that we were helping
06 them prepare for deregulation. But I don't know of anyone
07 talking to them about strategic --
08 SENATOR MORROW: As a part of that, would that
09 involve market strategies?
10 DR. GRIBIK: I wasn't on that account. I just
11 did a very, very little bit on that account. So, I'm not
12 familiar with what -- what took place on that account.
13 SENATOR MORROW: What was extent of your
14 involvement with that account?
15 DR. GRIBIK: I think they had me interview a
16 couple of people in their accounting department regarding some
17 of their -- their systems, how they handled some -- how it was
18 billing. I'm not sure. It was like a day-and-a-half of work,
19 or something like that. I don't really recall what I did.
20 SENATOR MORROW: So, you basically only spent a
21 day-and-a-half at LADWP?
22 DR. GRIBIK: Something like that. It was not
23 much time at all.
24 SENATOR MORROW: Who at Perot then would have
25 been in charge of, I guess, the contract that Perot had with
26 LADWP? Who would have been in charge of the project?
27 DR. GRIBIK: I'm not sure.
28 SENATOR MORROW: Who else at Perot was involved
0272
01 with the LADWP project?
02 DR. GRIBIK: It was mainly people from the
03 English East Midlands Electricity that were working on that.
04 And I don't recall the people offhand.
05 SENATOR MORROW: Mr. Suding?
06 DR. GRIBIK: I don't believe he was, because he
07 was hired out of Edison.
08 SENATOR MORROW: In some of the e-mails I'm
09 looking at, and there's several, I notice in the "From" and "To"
10 Mr. Alan Suding, the salutary part, at PSC-LADWP. What is
11 PSC-LADWP?
12 DR. GRIBIK: That was the e-mail server. We set
13 up an e-mail server in Southern California to handle both the
14 Edison and the LADWP accounts.
15 SENATOR MORROW: Senator Bowen touched on that.
16 I don't know if she understood it, I didn't.
17 DR. GRIBIK: Well, it was the e-mail server
18 called PSC-LADWP.
19 If you look at other things, like Hemant Lall, he
20 was down at the Southern California Edison account, but if you
21 look, his is PSC, I believe, or Not-Mac, which is Nottingham
22 something else in England. That's where his e-mail server was.
23 They set up e-mail servers where ever they had
24 sites, and that was the name of the e-mail server.
25 CHAIRMAN DUNN: Any other questions from the

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26 committee? Seeing none, let me pose a question to the
27 committee.
28 Any reason we need to keep Mr. Gribik here?
0273
01 Seeing none, if you so desire, you're welcome to
02 stay and observe, Mr. Gribik. I suspect your legal counsel may
03 have a different suggestion, but you are free to go at this
04 point, Mr. Gribik. Thank you very much for your testimony. It
05 is greatly appreciated.
06 And finally, Mr. Shirmohammadi, let's go directly
07 to you.
08 You need to bring that microphones right up to
09 you.
10 DR. SHIRMOHAMMADI: Can you hear me?
11 CHAIRMAN DUNN: Yes, we can.
12 DR. SHIRMOHAMMADI: I'm going to read --
13 CHAIRMAN DUNN: We expected that to happen.
14 DR. SHIRMOHAMMADI: Good afternoon, Mr. Chairman
15 and members of the committee.
16 At the outset, I would like to note that I have
17 voluntarily appeared before this committee and intend to
18 cooperate with your investigation.
19 I'm an engineer by training, having specialized
20 in high voltage and transmission design for much of my career.
21 I received my Ph.D. in 1982 in electrical engineering. In
22 recent years, I have specialized in information technology as
23 applied to energy industry, often as it relates to computer
24 modeling of physical transmission systems.
25 As part of my academic work and other research, I
26 have conducted studies and written papers related to
27 electromagnetic transients in high voltage systems, distribution
28 system analysis, and transmission congestion management.
0274
01 I'm not an economist or game theoretician.
02 It's my understanding that this committee is
03 investigating the California wholesale energy market and Perot
04 Systems' relationship to that market. The following information
05 may be of benefit, some benefit, to the committee.
06 I worked at Perot Systems from December 1996 to
07 May 2001. I provided my electrical engineering and IT
08 expertise, and did some sales work of various traditional
09 PG&E-IT products. I was not a member of Perot Systems
10 management until late 1998.
11 I was hired initially to work on the Southern
12 California Edison account. I participated in efforts to market
13 Perot Systems traditional information technology and automated
14 meter reading products to Edison.
15 I was also briefly involved in efforts to market
16 the portfolio optimization software package of Dr. George Backus
17 at Edison.
18 At part of my work at Perot Systems from April
19 1997 to January of 1998, I served as advisor to Perot Systems'
20 California ISO project manager. My role at the ISO was to
21 assist with information technology systems integration issues.
22 Specifically, I took steps to ensure that ABB's, Ernst and
23 Young's, and other software work, vendor software, worked on the
24 ISO computer system.
25 I also conducted training sessions for ISO
26 personnel and other ISO participants regarding ISO's system
27 computer system interfaces.
28 In February of 1998, I left the Perot Systems
0275
01 California ISO account and began IT consulting work for Perot
02 Systems at the California Power Exchange. I became the account

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03 manager of Perot Systems' California Power Exchange account in
04 late 1998, and remained in that position until leaving the
05 company in May of 2001.

06 As I have stated, I am here voluntarily and will
07 do my best to assist you in your investigation. Please keep in
08 mind, however, that these events occurred many years ago, and
09 that my recollection may not be as fresh today as it was then.

10 Additionally, it's my understanding that Perot
11 Systems has produced over 27,000 pages of materials to this
12 committee. I have not attempted to review all of these
13 documents.

14 Thank you.

15 CHAIRMAN DUNN: Mr. Shirmohammadi, thank you for
16 that.

17 Questions from the committee? Senator Bowen,
18 Senator Peace, Senator Morrow, Mr. Drivon?

19 This is good news-bad news. You've been here a
20 long time. That's the bad news.

21 The good news is, as we get late in the day, the
22 amount of questioning gets limited, but I believe we've got a
23 few.

24 Mr. Drivon.

25 MR. DRIVON: Sir, you were involved with a
26 marketing effort involving Dr. Backus with Edison; is that
27 correct?

28 DR. SHIRMOHAMMADI: I was peripherally involved
0276 with that, yes.

01 MR. DRIVON: What was your involvement?

02 DR. SHIRMOHAMMADI: Um, the best of my
03 recollection, I was in a series of e-mails that was swirling
04 around about that marketing activity.

05 MR. DRIVON: Were you involved in any way in the
06 presentation to PG&E?

07 DR. SHIRMOHAMMADI: No.

08 MR. DRIVON: Were you aware at the time that a
09 presentation was being made to PG&E?

10 DR. SHIRMOHAMMADI: No.

11 MR. DRIVON: Were you aware that your expertise
12 and the expertise of Dr. Gribik were being used in an attempt to
13 attract business with respect to how the market would be managed
14 by market participants?

15 DR. SHIRMOHAMMADI: I had no knowledge of that at
16 that time.

17 MR. DRIVON: But you've seen those documents now?

18 DR. SHIRMOHAMMADI: That is correct.

19 MR. DRIVON: I don't know if you recall, but in
20 document 450, which --

21 MR. SANDERS: We do not have the book.

22 CHAIRMAN DUNN: This is the "problem with
23 taintedness" memo. It's Tab 30, Counsel.

24 MR. DRIVON: Mr. Schreiber, will you identify for
25 me, please, what this document is?

26 MR. SCHREIBER: We presume that this document is
27 written by George Backus, and it's some kind of an internal
0277

01 e-mail to Perot. We don't -- there's no cover page or header on
02 this.

03 MR. DRIVON: It was received as a PSC document,
04 which as we understand it would be a document that originated at
05 Perot, as opposed to documents that had been delivered by Backus
06 to Perot.

07 Is that fair, Counsel?

08 MR. SANDERS: It's fair. It was a document that

09 was in Perot Systems' files before the Backus documents were
10 delivered.
11 MR. DRIVON: Okay.
12 There is a paragraph that starts about halfway
13 down the page, and about halfway through that paragraph, on the
14 far right-hand side, is a sentence that starts, "It is unclear."
15 "It is unclear that this,"
16 talking about the protected strategies and real-time models in
17 this marketing program,
18 "It is unclear that this can be
19 done without Perot Systems help,
20 especially Paul Gribik's and
21 Dariush Shirmohammadi's expertise.
22 Both is [sic] very clever and
23 their minds are devious enough to
24 readily search for and find
25 gaming opportunities among the
26 myriad of individual (and
27 combined!) protocols."
28 Do you know what they mean by "gaming
0278 opportunities" here?
01 DR. SHIRMOHAMMADI: Well, I must say that this
02 is -- I was not aware of this document. I don't know was is
03 happening Mr. Backus' head at the time, especially when he
04 refers to me, and what kind of background he has had.
05 As far as I am aware, gaming -- not being a game
06 theory theoretician or an economist, all I knew was gaming is
07 basically strategizing portfolio maximizing, optimization, and
08 those type of activities that everybody would do in the course
09 of any business.
10 MR. DRIVON: Would you agree that the language
11 that we see here appears, at least, to talk about prospective
12 situations when it says "gaming opportunities," as opposed to
13 talking about opportunities that may have been foreclosed
14 because holes were plugged?
15 DR. SHIRMOHAMMADI: I have no idea what
16 Mr. Backus had in mind.
17 MR. DRIVON: You have no way to give me your
18 impression of what that might mean?
19 DR. SHIRMOHAMMADI: Not being -- not being an
20 expert, that would be -- that'd be true.
21 MR. DRIVON: The Perot Systems proposal to Edison
22 included a little short bio for Dr. Gribik. You worked with
23 Dr. Gribik for quite sometime; didn't you?
24 DR. SHIRMOHAMMADI: That is correct.
25 MR. DRIVON: In fact, at one point you were his
26 boss, and then you sort of switched, if I remember things right.
27 DR. SHIRMOHAMMADI: The other way around.
0279 MR. DRIVON: Okay, you switched. It was him and
01 then you; is that right?
02 DR. SHIRMOHAMMADI: In 19 -- in PG&E, he was for
03 a short period my boss, and after 1998, late 1998, I got back at
04 him.
05 MR. DRIVON: Looking at document 153 --
06 MR. SANDERS: Which tab is that?
07 CHAIRMAN DUNN: Tab 3.
08 MR. DRIVON: Dr. Gribik is described as a key
09 player in the development of the ISO protocols for California.
10 Do you see where it says that in the Edison
11 proposal?
12 DR. SHIRMOHAMMADI: Yes, sir.
13 MR. DRIVON: And would you agree with that
14

15 statement based on your knowledge?
16 DR. SHIRMOHAMMADI: Based on my knowledge of
17 Dr. Gribik, he's a very smart man, and he studied ISO
18 protocols.
19 MR. DRIVON: You were his boss at this time; is
20 that correct?
21 DR. SHIRMOHAMMADI: No, I was not.
22 MR. DRIVON: You were not.
23 DR. SHIRMOHAMMADI: No, I was not.
24 MR. DRIVON: You worked with him at this time?
25 DR. SHIRMOHAMMADI: Depending on exactly what
26 timeframe this is.
27 MR. DRIVON: When the proposal was made to
28 Edison.
0280
01 DR. SHIRMOHAMMADI: We were working in the same
02 team, correct.
03 MR. DRIVON: I don't think you answered my
04 question.
05 My question was, he's described here as "a key
06 player in the development of the ISO protocols for California."
07 And you told me that he was a smart man.
08 But my question is, is that an accurate
09 statement?
10 DR. SHIRMOHAMMADI: I think that is a sales
11 hype.
12 MR. DRIVON: You think that's sales hype?
13 DR. SHIRMOHAMMADI: Yes, sir.
14 MR. DRIVON: Somebody trying to fool somebody
15 with this?
16 DR. SHIRMOHAMMADI: I'm assuming sales documents
17 exaggerate somewhat.
18 MR. DRIVON: Okay.
19 SENATOR PEACE: Did Perot Systems in the regular
20 course of business engage in this degree of sales hype? Is this
21 common?
22 DR. SHIRMOHAMMADI: I'm not even sure that this
23 one was even prepared by Perot Systems.
24 MR. DRIVON: Let me ask you in this question --
25 SENATOR PEACE: Wait a minute.
26 You saw this document. This is the Edison
27 presentation. You were part of the team; correct?
28 DR. SHIRMOHAMMADI: No, I was not part of the
0281
01 presentation.
02 SENATOR PEACE: Did you say you were? I thought
03 that's what you said.
04 DR. SHIRMOHAMMADI: I was in a series of e-mails
05 that discussed that.
06 SENATOR PEACE: And you were working with Edison.
07 You were working on the Edison account.
08 DR. SHIRMOHAMMADI: At that time I had -- no, I
09 had stopped working at Edison account. I was just --
10 SENATOR PEACE: You were familiar that Backus was
11 making a presentation to Edison, and Perot was part of the
12 presentation?
13 DR. SHIRMOHAMMADI: I became aware every that
14 through those e-mails, yes.
15 SENATOR PEACE: Did you have a viewpoint of
16 Mr. Backus?
17 DR. SHIRMOHAMMADI: Oh, I met him -- I bumped
18 into him once and probably talked to him a couple of times on
19 the phone.
20 SENATOR PEACE: Did you share the view you heard

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21 articulated earlier that he was a blow-hard?
22 DR. SHIRMOHAMMADI: From -- I cannot comment on
23 that based on those three --
24 SENATOR PEACE: You can say no, you didn't share
25 the view; you're not sure; or you can say yeah.
26 DR. SHIRMOHAMMADI: I'm not sure. I'm not sure.
27 SENATOR PEACE: So, did you see this document or
28 this representation before now, or is this the first time you've
0282 seen it?
01 DR. SHIRMOHAMMADI: This is the first time I'm
02 seeing this part, yes.
03 SENATOR PEACE: Is it unusual in the Perot
04 organization to have these kinds of overrepresentations or
05 misrepresentations?
06 DR. SHIRMOHAMMADI: As I mentioned, this is --
07 SENATOR PEACE: I didn't ask you who it was
08 prepared by. I just asked you, if we were to look at Perot
09 sales documents in general, and descriptions of their employees,
10 because you will note earlier, in a document not prepared by
11 Mr. Backus, there are even larger claims made with respect to
12 Dr. Gribik's participation. Much more significant claims than
13 are made here.
14 My question to you is, as a rule, does Perot
15 allow its sales documents to engage in resume puffing?
16 DR. SHIRMOHAMMADI: I have no idea what the rule
17 at Perot Systems --
18 SENATOR PEACE: You don't have any idea, so
19 you're not sure whether Perot tolerates resume puffing or not in
20 its sales documents?
21 DR. SHIRMOHAMMADI: I would not know whether
22 Perot Systems tolerates that.
23 SENATOR PEACE: You wouldn't know whether they
24 would or not.
25 DR. SHIRMOHAMMADI: I would not.
26 SENATOR PEACE: So as far as you know, it's
27 possible that Perot Systems does allow resumes to be puffed in
0283 their sales documents?
01 DR. SHIRMOHAMMADI: Possible.
02 SENATOR PEACE: Possible. You were starting to
03 say probable?
04 DR. SHIRMOHAMMADI: No, possible.
05 SENATOR PEACE: Now, we heard a great deal from
06 Mr. Perot and others to the press about Perot allegedly having
07 usually high ethical standards as a company.
08 DR. SHIRMOHAMMADI: That is correct.
09 SENATOR PEACE: And you worked there how long?
10 DR. SHIRMOHAMMADI: Five years, about five years.
11 SENATOR PEACE: So, you worked for Perot Systems
12 for five years, and you don't know whether or not it was
13 considered to be unethical to engage in resume puffing in the
14 sales documents?
15 DR. SHIRMOHAMMADI: That's my position, correct.
16 MR. DRIVON: In this same document, if we look at
17 what it had to say about you, it says,
18 "He is also fully cognizant of
19 the California PX/ISO design
20 and operation."
21 Is that accurate?
22 DR. SHIRMOHAMMADI: That's not accurate.
23 MR. DRIVON: How is that inaccurate?
24 DR. SHIRMOHAMMADI: Because I'm not fully
25 cognizant of that, especially whenever this one was, I hadn't --
26

27 I was not fully cognizant of California ISO/PX design and
 28 operation.
 0284
 01 MR. DRIVON: So, that was just wrong.
 02 DR. SHIRMOHAMMADI: This -- this is inaccurate.
 03 MR. DRIVON: Okay.
 04 DR. SHIRMOHAMMADI: Sir, do you have the dates
 05 for this thing?
 06 MR. DRIVON: Whatever the date of the proposal to
 07 Edison was. It was in the fall of '97.
 08 CHAIRMAN DUNN: Let me correct that. It was in
 09 May of 1997.
 10 MR. DRIVON: So it was wrong, the statement is
 11 wrong.
 12 DR. SHIRMOHAMMADI: That is inaccurate, correct.
 13 MR. DRIVON: Why was it, sir, that a man of your
 14 stature would agree to be involved in a marketing program,
 15 proposals being written by somebody about whom he knew nothing,
 16 essentially, and who then didn't even read the materials that
 17 were presented?
 18 DR. SHIRMOHAMMADI: The material was not
 19 presented to me. I do not recall ever seeing this material.
 20 MR. DRIVON: Well, were you assigned by Perot to
 21 be a part of this team that was going to do this marketing, or
 22 was this something that you signed yourself up for?
 23 DR. SHIRMOHAMMADI: I was put on the e-mail list
 24 of some of the -- some of the discussions around Edison account.
 25 Around this marketing to Edison.
 26 MR. DRIVON: Did you understand Dr. Backus to be
 27 suggesting in these marketing efforts manipulative gaming
 28 strategies?
 0285
 01 DR. SHIRMOHAMMADI: As I said, I'm not an expert
 02 in gaming strategies.
 03 MR. DRIVON: I know you're not an expert, sir.
 04 DR. SHIRMOHAMMADI: So, I don't know whether --
 05 MR. DRIVON: Do you understand that, from time to
 06 time, there has at least be rumor to the effect that there have
 07 been manipulative strategies employed in California's
 08 electricity market since deregulation?
 09 DR. SHIRMOHAMMADI: I cannot comment on that, not
 10 being an expert.
 11 MR. DRIVON: Did you read at all, or become
 12 familiar in any way, with the Enron documents that described
 13 manipulative techniques, strategies, and activity by them, such
 14 as Fat Boy, and all of those others?
 15 DR. SHIRMOHAMMADI: I'm not aware of how those
 16 things are. I'm heard through the press about those names.
 17 That's it.
 18 MR. DRIVON: So, what you are then, sir, is an
 19 expert in electromagnetics as it applies to the electricity
 20 business?
 21 DR. SHIRMOHAMMADI: That's one area of my
 22 expertise, yes.
 23 MR. DRIVON: And do you choose not to concern
 24 yourself in these other areas, such as gaming, et cetera?
 25 DR. SHIRMOHAMMADI: Just a new big area to pick
 26 up, too old for that.
 27 MR. DRIVON: Other than the proposal with Edison,
 28 had you been involved in any other marketing activities at Perot
 0286
 01 of any kind?
 02 DR. SHIRMOHAMMADI: In what timeframe?
 03 MR. DRIVON: Any timeframe.

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04 DR. SHIRMOHAMMADI: I can talk about a few.
05 MR. DRIVON: Okay. Were any of those marketing
06 activities with which you were involved subject to the
07 accumulation of commissions or bonuses?
08 DR. SHIRMOHAMMADI: I still don't know how
09 commission worked at Perot for people like myself, who were
10 technical staff mainly.
11 MR. DRIVON: Is it your understanding that if you
12 were involved in successful marketing programs, there would be
13 some sort of commission or extra compensation?
14 DR. SHIRMOHAMMADI: That could happen, yes.
15 MR. DRIVON: Were you aware that there was a
16 concern at the ISO at any time that there could be a conflict of
17 interest problem with respect to this marketing effort?
18 DR. SHIRMOHAMMADI: I have been make aware of
19 that recently through this process.
20 MR. DRIVON: Were you ever aware at any time
21 during 1997 that there were these concerns by the ISO?
22 DR. SHIRMOHAMMADI: No, I'm not aware of that.
23 MR. DRIVON: Did anyone ever indicate to you that
24 there was any sort of ethics wall that was being built by Perot
25 with respect to these issues?
26 DR. SHIRMOHAMMADI: No, I was not made aware of
27 that.
28 MR. DRIVON: Did anyone at Perot ever ask you to
0287 sign any kind of document recognizing that conflict of interest
01 must be strictly avoided in the area of this marketing
02 operation?
03 DR. SHIRMOHAMMADI: I did not sign any --
04 anything to that effect.
05 MR. DRIVON: Dr. Gribik indicated on several
06 occasions that all he really knew about the protocols and
07 activities that were going on with respect to the ISO and the PX
08 were the public -- were also public and available to everybody.
09 Do you remember that testimony?
10 DR. SHIRMOHAMMADI: That is correct. I heard
11 that.
12 MR. DRIVON: Is that the same with you, or did
13 you have a more intimate knowledge of the protocols than that?
14 DR. SHIRMOHAMMADI: No, no more than what was in
15 public domain. And nowhere near as much he did, because I
16 didn't spend time reading that.
17 MR. DRIVON: Well, if you knew nothing more about
18 them than what was in the public domain, what did they need you
19 for?
20 DR. SHIRMOHAMMADI: Because I was providing a
21 service in systems integration area.
22 MR. DRIVON: So you didn't have anything to do
23 with development of the protocols, business protocols?
24 DR. SHIRMOHAMMADI: That is correct.
25 MR. DRIVON: And you've seen, as you sat here
26 today, references in some of these documents to the effect that
27 you did?
28
0288 DR. SHIRMOHAMMADI: That is -- I have seen some,
01 yes. You showed me one.
02 MR. DRIVON: And those, by your testimony then,
03 would be totally and absolutely inaccurate and wrong?
04 DR. SHIRMOHAMMADI: That would be exaggeration,
05 yes.
06 MR. DRIVON: Do you agree, sir, that the fact
07 that you may not have been involved on a day-to-day basis with
08 the work to be performed at the PX with respect to the
09

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10 protocols and computer programs would not mean that you couldn't
11 maintain contact and receive awareness and information from
12 those engaged there on day-to-day basis?
13 DR. SHIRMOHAMMADI: I do not understand the
14 question, sir.
15 MR. DRIVON: Well, I'm looking at Document Number
16 1108.
17 CHAIRMAN DUNN: Tab coming up.
18 MR. DRIVON: Let me ask a question here before we
19 go farther with this document.
20 CHAIRMAN DUNN: Tab 25.
21 MR. DRIVON: This document talks about Mr. Smith
22 and Mr. Gribik not being engaged on a day-to-day basis with the
23 work to be performed under the ISO contract.
24 Were you involved on a day-to-day basis with the
25 work to be performed under the contract with the PX?
26 DR. SHIRMOHAMMADI: What is the date of this?
27 MR. DRIVON: This document is -- do we have the
28 date of the document?
0289
01 MR. SCHREIBER: It's at the bottom right-hand
02 corner. It should be 11/14, something like that.
03 MR. DRIVON: It's November, it was faxed on
04 November 6th of '97. It was just about the first of November of
05 '97.
06 DR. SHIRMOHAMMADI: Okay.
07 MR. DRIVON: Were you involved at the PX at that
08 time?
09 DR. SHIRMOHAMMADI: No, I was not, sir.
10 MR. DRIVON: What were you doing then?
11 DR. SHIRMOHAMMADI: I was working on systems
12 integration at the California ISO.
13 MR. DRIVON: All right. Were you involved on a
14 day-to-day basis with the work to be performed there under the
15 contract?
16 DR. SHIRMOHAMMADI: I was.
17 MR. DRIVON: And did that give you access to any
18 confidential information that was being developed at the ISO at
19 that time?
20 DR. SHIRMOHAMMADI: I do not believe so.
21 MR. DRIVON: So the day-to-day work that you were
22 doing there was day-to-day work that the product of which would
23 have been available to everybody?
24 DR. SHIRMOHAMMADI: Um, the product of my work
25 was to make sure that the computer systems did talk with each
26 other and ran on the hardware that they were installed. Anybody
27 could have known about what the final product would have been.
28 The systems were working or were not working, according to
0290
01 market protocols.
02 MR. DRIVON: I think that's all I have for the
03 moment.
04 CHAIRMAN DUNN: I have couple questions,
05 Mr. Shirmohammadi.
06 Were you involved in any way with Perot Systems'
07 proposal for providing scheduling settlement services to the
08 California Department of Water Resources?
09 DR. SHIRMOHAMMADI: I was.
10 CHAIRMAN DUNN: What was your role in that
11 proposal for Perot Systems?
12 DR. SHIRMOHAMMADI: I was basically leading the
13 effort.
14 CHAIRMAN DUNN: I'm sorry.
15 DR. SHIRMOHAMMADI: I was leading the effort.

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CHAIRMAN DUNN: I want take you, for Counsel's purposes, Tab 22. It's a February 13th, '01 letter to Mr. Garris from Mr. Shirmohammadi. It's 874.

If we could highlight the second paragraph, almost the last sentence. It starts, "We are uniquely qualified," and then include the three bullet points.

Do you recognize this letter?

DR. SHIRMOHAMMADI: Yes, I do.

CHAIRMAN DUNN: Did you write it?

DR. SHIRMOHAMMADI: I did.

CHAIRMAN DUNN: The phrase that I've had Donna blow up there that she's got the arrow on,

"We are uniquely qualified to

offer CDWR solutions that will mitigate its technical and business risks. Prominent among our qualifications are:

"Perot Systems was a principal member of the teams that designed, developed and implemented scheduling and settlements business and IT solutions for both the California ISO and the California PX."

Is that accurate?

DR. SHIRMOHAMMADI: That's accurate.

CHAIRMAN DUNN: That's different than what Mr. Drivon was discussing with you regarding development of protocols.

DR. SHIRMOHAMMADI: This is part of the team which developed -- which included ABB and Ernst and Young.

CHAIRMAN DUNN: Okay, in an earlier question from Mr. Drivon, you labeled in a document that you didn't prepare, or we don't think you prepared, that the language about Perot systems having developed, or you having developed, protocols as puffery.

DR. SHIRMOHAMMADI: That's correct.

CHAIRMAN DUNN: This language that I just read, the first bullet point, is not the same as the language that Mr. Drivon was asking you before?

DR. SHIRMOHAMMADI: That is correct.

CHAIRMAN DUNN: Why is it different?

DR. SHIRMOHAMMADI: Because we were part of the team as with ABB and Ernst and Young, and those were the ones who were designing and building those systems.

CHAIRMAN DUNN: Let's go to the second bullet point there,

"Perot Systems developed and integrated the scheduling and settlement systems that are currently being used at CalPX -- "

Then it goes on to say, "we believe," et cetera.

Is that statement accurate?

DR. SHIRMOHAMMADI: We developed parts. We developed parts of the scheduling and settlement systems of the California Power Exchange, yes.

CHAIRMAN DUNN: So, that statement is inaccurate?

DR. SHIRMOHAMMADI: It doesn't state all of the systems, state all of the systems. It says we developed some parts of the scheduling and settlement systems.

CHAIRMAN DUNN: For that sentence to be absolutely accurate, it should say "in part"?

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22 DR. SHIRMOHAMMADI: It would have been more
23 accurate if it said "parts," yes.
24 CHAIRMAN DUNN: Okay. The next question I have,
25 unrelated to that document, Counsel, for your purposes, go to
26 Tab 14.
27 Donna, it's 528.
28 As they're bringing it up, Mr. Shirmohammadi,
0293
01 this is something we've covered in some detail earlier. I'm not
02 going to spend a lot of time on it.
03 Do you remember seeing this earlier today?
04 DR. SHIRMOHAMMADI: Not before today.
05 CHAIRMAN DUNN: No, no. I mean earlier today?
06 DR. SHIRMOHAMMADI: Earlier today, yes.
07 CHAIRMAN DUNN: Have you seen this document prior
08 to today?
09 DR. SHIRMOHAMMADI: No, I have not.
10 CHAIRMAN DUNN: Is it your testimony this is not
11 a document prepared by you?
12 DR. SHIRMOHAMMADI: This is not a document
13 prepared by me.
14 CHAIRMAN DUNN: Do you have any idea who may have
15 prepared this document?
16 DR. SHIRMOHAMMADI: I have to read it carefully
17 before I can even make any speculation.
18 CHAIRMAN DUNN: If you would, please. It's
19 pretty short. I understand you've testified you don't know, but
20 if you do have a best guess for us, we would certainly like to
21 know.
22 DR. SHIRMOHAMMADI: I will not even venture to
23 guess at this time.
24 CHAIRMAN DUNN: Okay. If we were trying to find
25 out who prepared it, do you have recommendation for us on how we
26 might do that within the Perot Systems?
27 DR. SHIRMOHAMMADI: Potentially ask more
28 questions of more people.
0294
01 CHAIRMAN DUNN: Any suggestions who we might ask?
02 The reason I'm asking is, I'm not trying to pin
03 you against the wall, Mr. Shirmohammadi.
04 What we're trying to do is, obviously, not
05 everybody at Perot Systems worked on the California projects.
06 DR. SHIRMOHAMMADI: That is correct.
07 CHAIRMAN DUNN: That's a limited universe. I
08 have no idea what the size of the universe is, but it's less
09 than 100 percent of Perot Systems associates. So, we're trying
10 to figure out, all right, who would we likely start asking to
11 determine who created that document?
12 DR. SHIRMOHAMMADI: One minute.
13 CHAIRMAN DUNN: Absolutely.
14 DR. SHIRMOHAMMADI: I would probably ask Hemant
15 Lall or Ed Smith.
16 CHAIRMAN DUNN: All right. And the reason you
17 picked those two?
18 DR. SHIRMOHAMMADI: Because they were involved in
19 these type of activities, marketing activities, and so on.
20 CHAIRMAN DUNN: In other words, you agree with
21 what Mr. Gribik said towards the end of his testimony. As far
22 as the marketing and sales efforts here in California, Mr. Lall
23 and Mr. Smith were the most likely individuals to lead that
24 effort?
25 DR. SHIRMOHAMMADI: That would be accurate. That
26 would be my guess.
27 CHAIRMAN DUNN: Senator Peace do you have a

28 question on this?

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01 SENATOR PEACE: On this document, Mr. Chairman, I
02 think there's a paragraph or sentence at the bottom of Page
03 00529, the next page, very last sentence.

04 And I really can't overemphasize the importance
05 of this,

06 "The immediate steps are to
07 arrange a session with ABB to
08 discuss market opportunities
09 such as INDEGO, Midwest ISO,
10 Ontario, NYPP, PJM etc."

11 These are other ISOs, okay, or RTOs, whatever
12 terminology one may -- other markets.

13 What's important, too, is that again, this is
14 another '97 document, August '97.

15 It's the next summer, I believe, that Midwest
16 implodes. And their system, they have massive price spikes in
17 the midwest.

18 Your description just a moment ago in terms of
19 this team of folks at Perot suggested it was limited to
20 California. You can see by their document they were not.

21 And if we connect that back to the theme that
22 weaves through here, which is that whether it's United Kingdom,
23 Australia, any of these markets are subject to being gamed.

24 And whether Perot was or was not marketing any
25 kind of trade secret based or confidential information, they
26 were clearly marketing the concept of gaming in other than a
27 neutral context. They were clearly marketing the concept of
28 manipulation, and even if that manipulation involved generally

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01 public information.

02 It also, once again, underscores the fact that
03 FERC knew about this information, had to have known that these
04 documents were matriculating around the country.

05 I'd be curious how you managed to get this
06 44-page document from Reliant. I suspect that similar documents
07 probably exist elsewhere within the energy Texas world.

08 And we also know, and I made a somewhat oblique
09 reference to this earlier, that Mr. Hogan, on behalf of SDG&E,
10 filed a detailed criticism of the California market structure at
11 FERC in 1996. That document is still there someplace.

12 It was never pursued in a formal hearing process
13 because, for whatever reasons, those participating in the WEPEX
14 process and at the Public Utilities Commission that were
15 ultimately -- made decisions about market structure -- prevailed
16 upon SDG&E not to pursue its filing, and thus created a,
17 quote-unquote, "united" front from California participants.

18 But FERC had in front of them Mr. Hogan's
19 document, which was intensely critical, and then later it became
20 the basis of a number of published articles, as well as
21 symposiums, and seminars, and retreats that occurred throughout
22 the country for a period of two years, that discussed various
23 flaws and holes in the market.

24 And I think it's just as important as Ms. Bowen's
25 admonition that we not allow FERC to get away with saying,
26 "Well, there wasn't illegal behavior; therefore, there's no
27 action we can take." The standard is just and reasonable.

28 Nor is it -- it's certainly worse conduct if in

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01 fact Perot violated confidentiality. It is not exculpatory if
02 they didn't, because if they packaged expertise, even if it was
03 expertise that could be gathered from public information,
04 publicly available information.

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05 And what I see in the combination of these
06 documents is an advocacy to attack the market, and to do so in a
07 way that is destructive to competitors and destructive to the
08 market itself. And they certainly allied themselves with Mr.
09 Backus, who overtly advocates such a course of action.

10 I think it's really critical that we recognize
11 that the Perot marketing, at least if this was Mr. Smith or the
12 other gentleman, at least in contemplation, was a far broader
13 agenda than merely exploiting the California market.

14 CHAIRMAN DUNN: Senator Morrow.

15 SENATOR MORROW: I'm on the same document. If
16 you can go to 000531.

17 You can see in the block there, sir, three
18 columns: "PSC/client contacts," three names are listed;
19 "Position on Organization"; "Date/next contact."

20 I'm interested in the first name on that list,
21 Vikram Budhraj a.

22 First of all, do you know Vikram Budhraj a?

23 DR. SHIRMOHAMMADI: No, I don't.

24 SENATOR MORROW: You don't who he is?

25 DR. SHIRMOHAMMADI: I know who he is.

26 SENATOR MORROW: Who is he?

27 DR. SHIRMOHAMMADI: He is a consultant to CDWR.

28 SENATOR MORROW: Now, back then or at any time,
0298 was he ever a client with Perot Systems?

02 DR. SHIRMOHAMMADI: He was at that -- in the
03 beginning, when I started at Edison account, he was a vice
04 president at Southern California Edison. So, he would be
05 considered a member of a client organization.

06 SENATOR MORROW: So, Edison was actually a client
07 with Perot Systems?

08 DR. SHIRMOHAMMADI: That is correct.

09 SENATOR MORROW: The proposal that we've been
10 talking about, Edison agreed to it? Frankly, I thought that it
11 all fell apart.

12 DR. SHIRMOHAMMADI: No, we were selling computer
13 services to Edison since '94.

14 CHAIRMAN DUNN: If I can correct that, Senator
15 Morrow, there were, in fact I think a part of the disclosure
16 initially with the contract with ISO, that you had existing
17 contracts unrelated with Edison.

18 But my understanding is that the actual
19 presentation to Edison, and series of e-mails, resulted in a
20 contract signed between Edison International and Mr. Backus, I
21 believe.

22 SENATOR MORROW: All right.

23 In any event, looking at this, Edison would be a
24 client not, Mr. Budhraj a; correct?

25 DR. SHIRMOHAMMADI: That would be correct, yes

26 SENATOR MORROW: I don't want to put words in
27 your mouth. If Mr. Budhraj a was a client, let me know.

28 DR. SHIRMOHAMMADI: He was not a client

0299
01 organization.

02 SENATOR MORROW: He was or was not?

03 DR. SHIRMOHAMMADI: He was at Edison, so he was
04 in our client's organization.

05 SENATOR MORROW: Oh, in the client's
06 organization, okay.

07 You note his position here in the second column:
08 "PX Governing Board-Interim Chair." Chair of the Technical
09 Advisory Committee for the ISO, Chair of that.

10 First of all, the PX was a client as well of

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11 Perot Systems; correct?
12 DR. SHIRMOHAMMADI: Later in '97 and then
13 starting '98.
14 SENATOR MORROW: That was in September of 1997?
15 DR. SHIRMOHAMMADI: That is correct.
16 SENATOR MORROW: And the ISO was also a client of
17 Perot; correct?
18 DR. SHIRMOHAMMADI: That is correct.
19 SENATOR MORROW: That was March of 1997; right?
20 DR. SHIRMOHAMMADI: That would be about the date,
21 yes.
22 SENATOR MORROW: Reading this, it would seem to
23 indicate, tell me, would it be inconsistent or implausible that
24 Mr. Budhraj was the point of contact for those two clients, the
25 PX and the ISO; is that correct?
26 DR. SHIRMOHAMMADI: I would not know that, sir.
27 SENATOR MORROW: Who was, if you know, the
28 contact for your clients, Perot's clients, the PX and the ISO?
0300
01 DR. SHIRMOHAMMADI: Um, we were -- at the working
02 level, of course, we were working with a lot of people. At the
03 higher level, I don't know who our account management dealt with
04 at ISO directly, but at working level, we were working with many
05 people.
06 At the PX in the beginning, I think this work
07 started for Jim Kritikson.
08 SENATOR MORROW: On the third line down here, you
09 have as your client contacts Edison, we've gone over that, but
10 to the right, position on organization, PX and ISO team
11 What does that mean to you?
12 DR. SHIRMOHAMMADI: Could you repeat the
13 question, please.
14 SENATOR MORROW: Certainly.
15 The third name down, It says "Edison" under
16 PSC/client contacts, and then the second column under "Position
17 on organization," it's got "PX and ISO team."
18 I'm curious. I mean, I'm puzzled why Edison
19 would be related to the PX and ISO team?
20 DR. SHIRMOHAMMADI: I -- I don't know even
21 understand the concept of this table.
22 SENATOR MORROW: Fair enough.
23 Thank you, sir.
24 CHAIRMAN DUNN: Mr. Shirmohammadi, and Counsel,
25 Tab 28.
26 I'm looking at the, "Here are my notes for
27 tonight," Counsel. Right at the very top, on sentence, "Here
28 are my notes for tonight."
0301
01 MR. SANDERS: We have it.
02 CHAIRMAN DUNN: It's my understanding,
03 Mr. Shirmohammadi, that you were, at least in part, involved in
04 some presentations that may have been made to Edison in May of
05 '97; is that correct?
06 DR. SHIRMOHAMMADI: That's not correct.
07 CHAIRMAN DUNN: You were involved with other
08 contractual work with Edison, but had no involvement in that
09 presentation?
10 DR. SHIRMOHAMMADI: That is correct.
11 CHAIRMAN DUNN: All right.
12 My only question for you on this particular
13 document is, is this a document prepared by you?
14 DR. SHIRMOHAMMADI: No, sir.
15 CHAIRMAN DUNN: All right.
16 Any other questions from committee members on

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17 anything with respect to this witness? Senator Morrow.
18 SENATOR MORROW: Sir and the committee, we can go
19 to Tab 18. It should be the e-mails, 558. That's where it
20 begins.
21 Mr. Shirmohammadi, let me ask you first of all,
22 have you ever had any conversations with Alan Suding, talked to
23 him about gaming opportunities?
24 DR. SHIRMOHAMMADI: Not with Mr. Suding. I
25 haven't had any conversations with Mr. Suding regarding gaming
26 opportunities.
27 SENATOR MORROW: None whatsoever at any time?
28 DR. SHIRMOHAMMADI: Not regarding gaming
0302 opportunities.
01 SENATOR MORROW: Referring your attention to Page
02 000558, you see on the bottom e-mail there, apparently the
03 author of that -- oh, I'm sorry.
04 Let me restate the question. At any time have
05 you ever had a conversation with Mr. Gribik about gaming
06 opportunities?
07 DR. SHIRMOHAMMADI: In the context of strategic
08 thinking and strategic portfolio optimization, and actions of
09 the market participants, yes.
10 SENATOR MORROW: Okay. How many conversations
11 and how often have you talked to Mr. Gribik about gaming?
12 DR. SHIRMOHAMMADI: Probably two, three times
13 altogether.
14 SENATOR MORROW: Let me go over to 560. Do you
15 have that?
16 The middle 3-mail apparently indicates "Author:
17 Dariush Shirmohammadi."
18 DR. SHIRMOHAMMADI: That's correct.
19 SENATOR MORROW: Are you in fact the author of
20 that e-mail, sir?
21 DR. SHIRMOHAMMADI: That is correct.
22 SENATOR MORROW: The first paragraph it says,
23 "Just to follow up with Paul's
24 point,"
25 "Paul" meaning Mr. Gribik?
26 DR. SHIRMOHAMMADI: That is correct.
27 SENATOR MORROW: [Reading text]
0303 "Just to follow up with Paul's
01 point, we cannot restrict
02 ourselves to Southern California
03 Edison or even California where
04 whatever we do could have
05 conflict of interest connotations
06 to it."
07 What did you mean by that?
08 DR. SHIRMOHAMMADI: Uh, that whatever we do could
09 be misconstrued.
10 SENATOR MORROW: In what way? Elaborate on that.
11 I mean, I can read what it says, but what did you mean by it?
12 DR. SHIRMOHAMMADI: Today's session.
13 SENATOR MORROW: I'm sorry.
14 DR. SHIRMOHAMMADI: Today's session.
15 SENATOR MORROW: I don't understand.
16 DR. SHIRMOHAMMADI: Um, people asking us why did
17 you do this or that while you're working on ISO projects.
18 SENATOR MORROW: Well, let's go down to the
19 second here. It says,
20 "Hence our main focus should be
21 to ensure that ..."
22

23 And you have four items down there.
 24 The second item I'm most interested in. You've
 25 written,
 26 "This project, if we did go
 27 forward with it, should be
 28 construed as developing tools to
 0304 prevent gaming against Southern
 01 California Edison rather than to
 02 allow Southern California Edison
 03 to game the market."
 04 What did you mean by that?
 05 DR. SHIRMOHAMMADI: To me, Edison was an energy
 06 buyer as a UDC, and they would basically -- not being, by the
 07 way, an expert in this area, to me buyers would do defensive
 08 techniques, and sellers offensive.
 09 SENATOR MORROW: These are your words.
 10 DR. SHIRMOHAMMADI: Yes.
 11 SENATOR MORROW: This is not somebody writing or
 12 talking about you.
 13 DR. SHIRMOHAMMADI: Correct.
 14 SENATOR MORROW: These are your words. You chose
 15 to use the words, "game the market," and the like.
 16 Earlier, you indicated, I think, that you agreed,
 17 or I think my impression was, and tell me if it's correct or
 18 wrong, that you pretty much agreed with Mr. Gribik and Mr. Perot
 19 in terms of the definition of "gaming."
 20 DR. SHIRMOHAMMADI: That's correct.
 21 SENATOR MORROW: Is that right?
 22 DR. SHIRMOHAMMADI: That's correct.
 23 SENATOR MORROW: Strategical decisions playing
 24 out the various strategies and the like; correct?
 25 DR. SHIRMOHAMMADI: That is correct.
 26 SENATOR MORROW: Okay. My question, I mean, that
 27 in and of itself, assuming that definition, there's nothing
 0305 wrong with that.
 01 Why is it, then, that in this e-mail, you're
 02 saying that the project if it goes forward should be construed
 03 to prevent gaming against Southern California Edison, rather
 04 than to allow Edison to game the market? If gaming meant that,
 05 what's wrong with Edison or anyone else gaming the market?
 06 DR. SHIRMOHAMMADI: It's just the connotation of
 07 it.
 08 SENATOR MORROW: I don't understand. Help me
 09 understand.
 10 DR. SHIRMOHAMMADI: Since Edison was an energy
 11 buyer, the perspective of the strategy that they would develop
 12 would be to make sure that they would defend themselves. That's
 13 my understanding.
 14 SENATOR MORROW: That's fine. I think I
 15 understand the perception that they should be able to defend
 16 themselves from being attacked by various competitors and the
 17 like and be put in a disadvantaged position.
 18 Why then should a project not be construed for
 19 Edison to game the market? That's how I read that. Am I wrong
 20 in reading it that way?
 21 DR. SHIRMOHAMMADI: As I said, my take as a non-
 22 game theoretician, or whatever, expert in that area, is since
 23 Edison was a buyer, the perspective regardless -- perspective
 24 would be they would be basically defending themselves on the
 25 market.
 26 SENATOR MORROW: I can see Edison as a buyer of
 27 wholesale energy, but how about as a seller? Edison

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01 International, their trading arm? Energy Mission?
 02 DR. SHIRMOHAMMADI: At this time, my
 03 understanding was, we were marketing to Edison UDC.
 04 SENATOR MORROW: I'm sorry?
 05 DR. SHIRMOHAMMADI: It was my understanding that
 06 we were marketing to Edison as a buyer, the utility.
 07 SENATOR PEACE: Are you done?
 08 SENATOR MORROW: Yes.
 09 SENATOR PEACE: Thank you.
 10 Why is Willie Heller the person you're dealing
 11 with if you're dealing with the UDC?
 12 DR. SHIRMOHAMMADI: I have know idea. I don't
 13 know Mr. Heller at all.
 14 SENATOR PEACE: I guess we'll have to ask him
 15 that question.
 16 I was also taken by the question that Senator
 17 Morrow asked, the path he was going down, because Mr. Perot and
 18 your colleague both insisted that gaming is neutral.
 19 And yet, you obviously, in your e-mail, were very
 20 concerned about how it would be construed.
 21 Now, am I to read this statement, where you say,
 22 "This project, if we did go
 23 forward with it, should be
 24 construed as developing tools to
 25 prevent gaming against SCE
 26 rather than to allow Edison to
 27 game."
 28 Are you trying, when you say "construe," does it

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01 mean you want the package articulated in such a way that it only
 02 appears to be defensive in order to not reveal the fact that
 03 there was really an effort here to present gaming opportunities
 04 for the market? Or do you mean that what the client is asking
 05 for here is defensive strategies?
 06 DR. SHIRMOHAMMADI: The last part would be closer
 07 to what my thinking would be.
 08 SENATOR PEACE: Did you have direct contact with
 09 Edison?
 10 DR. SHIRMOHAMMADI: On this project?
 11 SENATOR PEACE: Yes.
 12 DR. SHIRMOHAMMADI: No.
 13 SENATOR PEACE: You didn't. You never had any --
 14 I just find it odd.
 15 So, who was the --
 16 CHAIRMAN DUNN: Can I interrupt for one second,
 17 Senator Peace?
 18 On this same line, because I want to bring up
 19 another document. It's the one I asked you about at the end.
 20 It is Tab 28, Counsel. Tab 28, Counsel.
 21 It's the "Here are my notes for tonight," which I
 22 know, Mr. Shirmohammadi, you already said is not your document.
 23 But given what Senator Morrow had just identified
 24 in your e-mail about "construing," I want to connect two things
 25 here, because there may be a relationship.
 26 Senator Morrow was asking you, and Senator Peace
 27 was asking you about particularly the word, I think,
 28 "construed," that you used in your e-mail.

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01 Now, I want to go to this document that Donna has
 02 up. I think, Counsel, you have it. It's the second two
 03 paragraphs. Actually, if we count the "Here are my notes for
 04 tonight," as one paragraph, it's the third and fourth
 05 paragraphs. That one and the next one down. Highlight both of

06 those two.
07 I think this goes to that word "construed" that
08 Senator Morrow zeroed in on. It says,
09 "The project will be in three
10 phases. We will describe the
11 project in the proposal but it
12 will be noted as a means for
13 SCE to protect itself from any
14 aggressive business activities
15 of competitors and to allow SCE
16 to take advantage of any business
17 opportunities that the new market
18 provides."
19 The next sentence is what we are in discussions
20 with, with several entities,
21 "I will write a (estimated six
22 page) paper that will go to a SCE
23 lawyer (and then presumably to
24 Heller) explaining what the
25 software can really do. I will
26 not imply"
27 Et cetera, et cetera, et cetera.
28 I will tell you from my perspective,
0309
01 Mr. Shirmohammadi, you put those two together, and what it
02 appears is going on is, we're going to tell the world it's a
03 defensive posture, when in fact it isn't. It has offensive
04 capabilities to it, and that's part of it.
05 And the word "construe" in your e-mail could be
06 read as a coverup to the offensive capabilities. And as
07 Mr. Drivon indicated earlier, this memorandum, which I know you
08 have stated is not yours, could be construed as: The real
09 purpose of this effort will be sent through an attorney,
10 presumably to provide an argument for attorney-client privilege
11 protection.
12 DR. SHIRMOHAMMADI: I could not comment on
13 anything that you said.
14 CHAIRMAN DUNN: Okay, thank you.
15 My pardon for interrupting, Senator Peace.
16 SENATOR PEACE: I'd just like to go down, staying
17 on that same memo, the third to last paragraph. The writer
18 says,
19 "I have PEROT, Paul, Jeff and
20 George broken out. Jeff is often
21 Jeff's shop and Perot is the
22 Perot shop."
23 So we know that this isn't Paul. We know it
24 isn't Jeff. We know it isn't George. Who's left?
25 DR. SHIRMOHAMMADI: [No response.]
26 SENATOR PEACE: In terms of the folks that were
27 working on this team and on this project? There wasn't that
28 many people; right?
0310
01 DR. SHIRMOHAMMADI: I would not know, sir.
02 SENATOR PEACE: You don't have to tell me who the
03 writer was. Who was left that was working on the project?
04 DR. SHIRMOHAMMADI: On -- on the marketing to
05 Edison on the strategies and stuff, is that what you're asking.
06 SENATOR PEACE: Uh-huh.
07 DR. SHIRMOHAMMADI: Um, I think Hemant and Al
08 Suding's name comes up. Those are the only ones I could
09 speculate on.
10 SENATOR PEACE: Hemant and who else?
11 DR. SHIRMOHAMMADI: And Al Suding. Those are the

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12 names that come up in the e-mails, and those are the only ones
13 that I --
14 SENATOR PEACE: So, it would likely be one of
15 those two?
16 DR. SHIRMOHAMMADI: It could be.
17 SENATOR PEACE: Who else could it be?
18 DR. SHIRMOHAMMADI: I could not -- I could not
19 speculate on behalf of whoever wrote this document.
20 SENATOR PEACE: I'd like to jump to the Semptra
21 document that we were discussing.
22 Do you recall the conversation about the "Bush
23 states," Semptra document? Are you familiar with this document?
24 DR. SHIRMOHAMMADI: No, sir.
25 SENATOR PEACE: You never saw this document?
26 DR. SHIRMOHAMMADI: I have never seen this
27 document.
28 SENATOR PEACE: This was a November 2000
0311 document. It appears to be presented by Perot Systems to Semptra
01 Energy.
02 Did you ever hear of the term, Semptra Alliance?
03 DR. SHIRMOHAMMADI: No, I have not heard of
04 Semptra Alliance.
05 SENATOR PEACE: Just to zero back again, you were
06 saying you had some dealings with Edison in their computer
07 systems going back a number of years; correct?
08 DR. SHIRMOHAMMADI: That's not correct, sir. I
09 worked at Pacific Gas and Electric, and then I started my work
10 at Perot Systems in the Southern California Edison, traditional
11 IT work. Then I was -- I then went to the California ISO
12 account.
13 SENATOR PEACE: I'm only asking because both of
14 the witnesses today professed to have no personal knowledge of
15 Vikram.
16 And I must tell you, it just is impossible to
17 believe, with all due respect, that anybody that had any
18 tangential knowledge of the California market didn't know
19 Vikram. It's not believable.
20 You must have been living in some sort of
21 remarkable cocoon to have managed not to come into contact with
22 Vikram.
23 He was the Interim Chair of the PX. He headed up
24 the key committee in the ISO developing the protocols. Before
25 that time, he headed up Edison's entire operation with respect
26 to restructuring.
27 Is that really your testimony?
28
0312 DR. SHIRMOHAMMADI: That's correct. I knew about
01 these roles, but I never came in contact with Mr. Vikram
02 Budhraj a.
03 SENATOR PEACE: Fascinating.
04 CHAIRMAN DUNN: Any other questions? None? No
05 other questions from the committee?
06 MR. DRIVON: I have one. Can I have 560, please.
07 Dr. Shirmohammadi, you thought that this
08 marketing effort in general, as exemplified by Edison --
09 CHAIRMAN DUNN: Tab 18.
10 MR. DRIVON: -- had the potential to be a big
11 money maker; didn't you?
12 MR. SHIRMOHAMMADI: Did I make that statement.
13 MR. DRIVON: I'm just asking you the question.
14 DR. SHIRMOHAMMADI: It -- it was a business.
15 MR. DRIVON: Let's blow up Number 4. This is
16 your e-mail.

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"I do not believe that we will be in a position to build another ISO system anywhere ... in the world anytime soon. PX maybe; but ISO I doubt. And this should not be a big deal given that the ISO/PX markets themselves may not be so lucrative anyway. However, systems such as the one being considered for SCE would have

applications everywhere and can provide us with tons of business opportunities."

Was that your opinion at the time of this project that you were tangentially involved with?

DR. SHIRMOHAMMADI: To me, this was an IT-type project, and this was the business we were in, and we could take this IT system and sell it everywhere.

MR. DRIVON: And you saw this as a major business opportunity and perhaps a major opportunity for you to profit individually from commissions or bonuses that you might receive as part of this team?

DR. SHIRMOHAMMADI: That is not accurate, sir.

SENATOR PEACE: As long as you have that piece up, it also, once again, points to "applications everywhere."

Now, by that, does that mean that the work product had some generic applications into various markets that went beyond the California market?

DR. SHIRMOHAMMADI: That was my understanding, that these types of applications could be used everywhere, yes.

SENATOR PEACE: If it was your belief that you were marketing to the UDC, why would there be value to Edison in applications outside the California market, because the utility would only be operating in the California market. Edison International, of course, would be operating in a variety of markets.

DR. SHIRMOHAMMADI: Hundreds of utilities out there with hundreds of their own markets, so you could basically

sell the software and services that go with the software.

SENATOR PEACE: But if the software was specific to the California market, then it would only have application in California.

DR. SHIRMOHAMMADI: This was not my intention.

SENATOR PEACE: So, your expectation was that this work product would be broad enough to be useful a PJAIM market or any of the other markets potentially?

And yet, it was your belief that your client was the utility, not Edison International?

DR. SHIRMOHAMMADI: That is correct, sir.

SENATOR PEACE: Okay.

CHAIRMAN DUNN: No questions from the committee? Senator Bowen.

SENATOR BOWEN: I would just like to publicly thank Senator Morrow for asking my questions. I was going to Tab 18. Thank you.

CHAIRMAN DUNN: Okay.

Mr. Shirmohammadi, I think we've reached the end of the questioning for you. We appreciate particularly your patience today. As usual with our committee we, at least the Chair, never anticipates going this long; we always do go this long, unfortunately.

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24 We appreciate your patience. We appreciate your
25 cooperation in discussing this matter previously with Chris and
26 others.

27 And I suspect you will be hearing more from us.
28 As you can probably guess, we still have an awful lot of

0315 questions.

01 DR. SHIRMOHAMMADI: At the risk of being asked
02 more questions and having to stay here longer, I'd like to make
03 sure that we understand that from my experience at Perot
04 Systems, I found them to be an incredibly ethical corporation in
05 everything they did.

06 CHAIRMAN DUNN: Okay. We have no further
07 questions. Thank you very much.

08 [This ends the testimony of
09 former Perot Systems Employees.]

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0316 01 CHAIRMAN DUNN: What we're going to do, Terry,
02 are you ready? Because we have one question for you.

03 Edison, get ready, because we're going to go
04 right from Terry to Edison.

05 And as Terry's coming up with Charley right
06 behind him, I want to thank -- Charlie, if you can pass on to
07 Jack for me our great appreciation for him sitting here all day,
08 and then being the lucky one to get sent home. We greatly
09 appreciate his effort in that regard.

10 Terry, thank you. As you know, we really have
11 one question for you. Unfortunately, we're going to have to put
12 you under oath for that one question.

13 Stephanie, if you would, and we can get right to
14 it.

15 [Thereupon the witness,
16 TERRY WINTER, swore to tell
17 the truth, the whole truth,
18 and nothing but the truth.]

19 CHAIRMAN DUNN: Terry, sit down and I'll pose
20 the question to you. Here we go.

21 You heard testimony today from Mr. Schreiber
22 based upon his conversations with Mr. Tranen in New York that
23 Mr. Tranen's opinion was, there was never a green light given to
24 Perot Systems to continue their marketing efforts that have been
25 described in detail today and in the internal Perot Systems
26 documents.

27 The question for you is, whether you have any
28 different opinion than Mr. Tranen? Did, to your knowledge, the

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01 ISO ever give the green light to Perot Systems to continue
02 marketing the flaws in the system to market participants?
03 MR. WINTER: I do not believe that the ISO ever
04 gave the green light to Perot Systems to market.
05 Now let me -- as always, you should stop there,
06 but I do have to qualify that.
07 I can testify that I never gave the green light,
08 is my position, as C00.
09 I have reviewed the material, and to me, it lays
10 out a very clear story, that we never reached an agreement at
11 the end of that. I have had two of my staff members talk to
12 Jeff Tranen. He adamantly states that he did not give the green
13 light to go with the marketing program as Perot has identified.
14 And my personal experience with Jeff Tranen is
15 that he is very, very meticulous. And if he had reached an
16 agreement, there would have been a signed document.
17 CHAIRMAN DUNN: Okay.
18 Unless there's any follow-up.
19 SENATOR BOWEN: I have a question.
20 I'm lost in my documents a little bit at this
21 point. And I only have a tenth of a box.
22 I noted in one of the documents, and I'll look as
23 I talk, that there was from the ISO a discussion about the time
24 constraints that the ISO was facing to get the market open.
25 CHAIRMAN DUNN: That was Skadden, Arps notes that
26 were produced when ISO made a limited waiver of attorney-client
27 privilege as to the Perot Systems issue, Tab 25.
28 SENATOR BOWEN: At least I know it's there. I
0318 haven't lost the substance.
01 The question then becomes whether, in your
02 opinion, the ISO would have taken a different line on this
03 potential conflict of interest had there not been time pressure?
04 Sometimes when you have a contractor who you're
05 trying to deal with to get something done, you may be reluctant
06 to change to make a change because of the delay.
07 MR. WINTER: Clearly, we were under tremendous
08 pressure to get the systems up and running.
09 On the other hand, we wanted to do it right.
10 But Perot was a very integral part. And in the
11 latter part of October and November is when all the integration
12 and the testing was reaching its highest level of activity.
13 So yes, we were very concerned about that.
14 However, while I was not involved in all the
15 meetings between Perot, actually any of them, and Jeff, I think
16 it was very clear that Jeff pushed the issue that he in fact did
17 want a resolution and some guarantees that they were not going
18 to use the material that they had.
19 So, I can't say that it would have been any
20 different. It was more a factual, did they break the rules of
21 the contract or did they not.
22 SENATOR BOWEN: But I think the question was,
23 what are the remedies when you have a contractor who's doing
24 something that is not within the scope of the contract, or
25 arguably not?
26 The first one is, you know, hire somebody else.
27 MR. WINTER: Right.
0319 SENATOR BOWEN: What are the time implications of
01 that?
02 MR. WINTER: That would have delayed us anywhere
03 from three to six months.
04 SENATOR BOWEN: We see actually in one of these
05 documents there's some discussion about the amount of time that
06

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07 it would have taken to do that. My sense in reading it was that
08 the ISO really felt like its back was against the wall.

09 MR. WINTER: Clearly, as the one who was making
10 sure that the operation systems were there, and that we had all
11 the security in place, it would have been a tremendous impact to
12 us.

13 SENATOR PEACE: And if I can follow-up on that.
14 During that period of time, to the extent there
15 was pressure on you to get the market open, where was it -- was
16 it coming from the Oversight Board or from the Legislature?

17 MR. WINTER: Um, I don't think anyone came to me
18 directly and said, you know, you have to have this in place or
19 you're breaking the California State law.

20 SENATOR PEACE: In fact, on the contrary. There
21 was --

22 MR. WINTER: There was some discussion which
23 said, you know, let's do it right. Let's be sure we have --

24 SENATOR PEACE: You came to me.

25 MR. WINTER: Yes, I did.

26 SENATOR PEACE: And what did I say?

27 MR. WINTER: You said, do it right.

28 SENATOR PEACE: What did I say about time?

0320 01 MR. WINTER: If it took more time, that was what
02 we were going to do, because at that time, I was very concerned
03 that we could not make the January 1 date.

04 Later, when the systems got in place, we started
05 three months later.

06 SENATOR PEACE: So the time pressures were coming
07 from some place other than -- pressure to open market, get it
08 going, was coming -- I'm not going to ask you to make judgments
09 or tell me where it was coming from, whether it was ISO board
10 members, whether it was market participants, whether it was
11 FERC.

12 But it wasn't coming from the Oversight Board,
13 which was at that time still in place and still with some
14 authority before FERC had --

15 MR. WINTER: That's correct. And I must say,
16 probably a lot of it was very internally oriented. You know, we
17 had a goal to make it January 1st, and we were going to try our
18 best to do that.

19 SENATOR PEACE: As you observed the testimony
20 today, you saw the Perot folk, or former Perot folk,
21 characterize the earlier characterizations of their roles as
22 being exaggerated, or puffed out of proportion.

23 What's your perception of what these two
24 gentlemen's roles really were? Were they more accurately
25 represented in the sales material in terms of the intimacy of
26 their knowledge of what was going on with the ISO? Or are they
27 more accurately represented in their contentions today that they
28 really didn't know anything special?

0321 01 MR. WINTER: I think it's more the latter. Their
02 role was to integrate. ABB was the developer.

03 But any integrator is going to know the protocols
04 intimately, because they're going to have to make sure that they
05 all fit together.

06 So, on the one hand, I felt that it was rather
07 inflated when they start -- and I don't even remember who they
08 were, but they start talking about thousands of holes to be
09 plugged. I would take exception to that, and want to see them
10 all listed out so we can address them.

11 But clearly, I think, those were exaggerations.
12 I think that they had an intimate knowledge of the development

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13 of the system, but not the line-by-line code.

14 SENATOR PEACE: Insofar as the marketability for
15 the value, the added value of that inside information, do you
16 believe that that in fact did, in the event that they were out
17 and selling their knowledge, did that represent knowledge that
18 others didn't have?

19 MR. WINTER: I really couldn't say because we had
20 so many debates, you know, from 1994, as you're well aware, and
21 on about the different designs, should we go with the locational
22 margin pricing, should we go with a bilateral market?

23 When you look at all of the debates that went on,
24 I can't evaluate who was more wise in one area than another.

25 SENATOR PEACE: And over these years, these
26 various meetings through WEPEX and other sponsored events, and
27 as the market matured in the methodology, FERC was in regular
28 contact with all of this evolution; was it not?

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01 MR. WINTER: I would say that I don't know it so
02 much that FERC was in contact, as we were in contact with FERC,
03 sending them documents. You know, we had 44 amendments, and a
04 lot of those deal with --

05 SENATOR PEACE: In the process of making those
06 amendments as well as having -- I believe contemporaneously you,
07 the ISO, also filed documents at FERC, objecting to and arguing
08 that FERC should not award market-based tariffs to Mirant and a
09 variety of other folks?

10 MR. WINTER: That is correct.

11 SENATOR PEACE: And in the process of those
12 filings, did you share the information and the concerns about
13 the ability of these entities to game the market?

14 MR. WINTER: Yes. Our Department of the Market
15 Analysis constantly, as well as the MSC, the Market Surveillance
16 Committee, had written many reports to FERC, advising them of
17 the concerns that we had.

18 SENATOR PEACE: So, do you believe it would be
19 fair to say FERC was intimately aware of the potential of this
20 market to be gamed?

21 MR. WINTER: I -- I can't speak for them. But we
22 certainly --

23 SENATOR PEACE: Let me rephrase the question
24 then.

25 Should they have been intimately aware?

26 MR. WINTER: I think that we submitted
27 considerable data to that effect to them.

28 SENATOR PEACE: Should they have been aware?

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01 MR. WINTER: Uh, I don't know that I want to
02 judge what people should or should not understand.

03 I think we've made a good showing that things
04 were happening.

05 SENATOR PEACE: I understand the sense that
06 everybody has, you don't want to judge the people that are out
07 there making a judgment right now. But at some point, at some
08 point, we got to stop protecting them. Because we're afraid
09 that if we don't protect them, they'll do bad things to us.

10 And the fact is, you know and I know, they knew.

11 MR. WINTER: Yes, they knew.

12 SENATOR PEACE: Or should have known. And they
13 didn't do anything about it, did they?

14 MR. WINTER: No.

15 SENATOR PEACE: Instead, they became active
16 collaborators.

17 MR. WINTER: Well --

18 CHAIRMAN DUNN: Mr. Drivon.

MR. DRIVON: Mr. Winter, I really do have just one question.

CHAIRMAN DUNN: Heard that before.

MR. DRIVON: Before this hearing, you sat here all day and listened to this procedure, did you understand the extent of Perot's marketing activities concerning the marketing of market flaws? Did you understand the extent of it?

MR. WINTER: No, I did not. I was aware of -- you know, after I had read the material, of what they had done. We certainly looked at the presentation after we were notified

that they were marketing, but I had know idea of the level of which they were engaged.

MR. DRIVON: Would it be fair to say -- this is the end of my first question.

[Laughter.]

MR. DRIVON: Would it be fair, Mr. Winter, to characterize your response to what you've seen today as alarming?

MR. WINTER: I would say alarming. I mean, again, I've had six years of people arguing the economics.

But I think what -- what disturbs me the most about this is, when you're trying to put together something, as we were trying to develop with this market, to have people that you had hired to actually perform a lot of the activities that would allow this market to work, to be going out and advising people how to -- to game it.

I would much have preferred to have them -- and I think some of them did -- but come to us and say, "Look, we're thinking about marketing this. Do you see that as a conflict with your contracts?" And they would have got resounding, "Yes, we do see it as a conflict."

So yeah, I was very disturbed that they had gone to that level.

MR. DRIVON: A little bit like the security company that you hire to protect your house, taking the information that they have and going out and telling the bad guys which window won't lock.

CHAIRMAN DUNN: That's question 1(c).

[Laughter.]

MR. WINTER: I try not to get into analogies.

CHAIRMAN DUNN: I'm assuming it's rhetorical.

Seeing no other questions -- oops, sorry, Senator Morrow.

SENATOR MORROW: Just one question, Mr. Winter. You may have already answered it when I was out momentarily.

Basically who at ISO hired Perot Systems?

MR. WINTER: Perot Systems was hired at the ISO under an alliance agreement. When we went out for the -- and when I say "we," this was before the ISO was actually formed.

They went out, and we looked for someone who could put the whole system together. We couldn't find one individual company that was willing to take that on because of the risk and the timeframe that we were presenting it.

So, we got a combination, which was Perot, Ernst and Young, and ABB that came in as the Alliance. And that contact, as I understand it, was signed in March of '97.

SENATOR MORROW: Thank you.

CHAIRMAN DUNN: Seeing no further questions, Mr. Winter, thank you very much, particularly for your patience all day long. I know that you could have been doing better things.

Charlie, thank you as well. If you'd please pass

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25 on the committee's appreciate to Jack as well, for sitting there
26 as well. Thank you two very, very much.

27 As Edison is coming up, we'll take five minutes,
28 Evelyn, so you take a little bit of a stretch, and then we'll

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01 get right into Edison.

[Thereupon a brief recess
02 was taken.]

03
04 CHAIRMAN DUNN: We are going to turn to the
05 Edison representatives, and then we have one additional
06 individual after that.

07 For those Edison representatives that will be
08 providing testimony, Stephanie, if we can have them stand up.

[Thereupon the witnesses,
09 WILLIAM HELLER and LEWIS
10 HASHIMOTO, swore to tell
11 the truth, the whole truth,
12 and nothing but the truth.]

13 CHAIRMAN DUNN: Before we do that, Eric, are
14 they going to have some opening comments they want to make?
15 There's no opening comments from them.

16 Why don't we have each of you identify yourselves
17 please.

18 MR. HELLER: I'm William Heller. I'm President
19 and Chief Executive Officer of Edison Mission Energy.

20 MR. HASHIMOTO: I'm Lewis Hashimoto. I'm a Vice
21 President in Edison Mission Energy.

22 CHAIRMAN DUNN: All right.

23 What I want to do to start this one is similar to
24 what we did a long time ago today. That is, Mr. Schreiber, I'm
25 going to turn to you. If you would share with us the fruits of
26 the investigation relating to Edison and Perot Systems, in
27 summary.
28

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01 MR. SCHREIBER: Okay. And I will try to be
02 brief.

03 We -- after the Reliant document was discovered,
04 the 44-page document written by Perot Systems was discovered,
05 the committee sent out letters to basically every market
06 participant to determine whether or not they had entered into
07 any kind of contractual arrangement with Perot Systems, or if
08 they had any documents relating to Perot Systems.

09 In Edison's case, we did receive some documents.
10 Then it became apparent to the committee that George Backus and
11 Policy Assessment Corporation were important -- was an important
12 entity in this whole transaction. So, the committee broadened
13 its scope, and we ended up engaging in several discussions with
14 Edison, which ultimately yielded some documents.

15 Perot's documents --

16 CHAIRMAN DUNN: Let me interrupt, Mr. Schreiber.
17 Be specific, because obviously, we were dealing with Edison and
18 Southern California Edison.

19 MR. SCHREIBER: Right. And that's actually a bit
20 of a point of confusion, because there appears -- I mean, the
21 committee's interest in this issue has been to try to determine
22 who George Backus and Perot Systems was dealing with.

23 I would say there is still some level of
24 confusion after hearing today's testimony, given that we were
25 told that Perot Systems was dealing with the UDC, and the names
26 that we've heard are not Southern California Edison officials.

27 So, just to characterize the last 24 hours, let's
28 say, we did receive a string of e-mails, as they've been cited

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01 several times today, involving Perot Systems employees

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02 discussing a possible deal with Edison.

03 CHAIRMAN DUNN: Did those come from Edison?

04 MR. SCHREIBER: No, those documents were provided
05 to the committee -- produced to the committee by Perot Systems.

06 I think it's fair to say they raised a fair
07 number of questions in the eyes of the committee.

08 There were also number of other documents. One
09 in particular, a letter to Mr. Heller from, I believe, George
10 Backus, although you'll have to forgive me at this late hour.
11 But the letter itself referenced a six-page document which the
12 committee has been engaged in several discussions in trying --
13 with Edison and counsel -- trying to acquire.

14 Yesterday, I had conference call with counsel for
15 Edison and Mr. Heller and Mr. Hashimoto. And we discussed in
16 particular that six-page document, which to the best of their
17 knowledge, and I'm sure this will be a question to them today,
18 that they cannot find and do not know if they ever received.

19 And the second outstanding issue, as I would
20 characterize it, to the committee is the idea of offensive
21 versus defensive, is how I will characterize it.

22 The string of e-mails with Edison indicates to me
23 that there is some level of discussion on both offensive and
24 defensive fronts. And when that question was posed in the
25 conference call yesterday, the response I got back was that
26 Mr. Backus was ultimately hired.

27 CHAIRMAN DUNN: By whom?

28 MR. SCHREIBER: Well, I actually don't -- by

0329 Edison International.

02 CHAIRMAN DUNN: That was my understanding.

03 MR. SCHREIBER: Yeah, that was -- I wanted to
04 just double-check.

05 There was series of three presentations, as I
06 understand it. The first presentation was Mr. Backus alone.

07 The second presentation was Mr. Backus combined
08 in a joint venture with Perot Systems. That was apparently a
09 \$2.5 million proposal.

10 The third proposal was again Mr. Backus alone.
11 And please correct me along the way if I'm misstating my
12 understanding. Mr. Backus was then hired. It was a \$72,000,
13 contract, if I'm not mistaken; \$50,000 dollars of that was a
14 software purchase, so to speak, software agreement in which
15 Mr. Backus wrote software.

16 CHAIRMAN DUNN: When was that deal contracted,
17 approximately?

18 MR. SCHREIBER: The first contact between Edison
19 and Mr. Backus and Perot Systems was, as these e-mail strings
20 indicate, in early May.

21 Dr. Backus ultimately signed a contract in July
22 of 1997 and performed work from that point forward.

23 The exclusivity agreement, et cetera, does not
24 appear to be part of the contract, given that Dr. Backus was
25 simultaneously under contract with Edison and in discussions
26 with NEG, PG&E's unregulated arm.

27 I guess the last thing to say here is that the
28 \$72,000 that Edison paid Dr. Backus, \$50,000 of it was for

0330 software that he developed, \$22,000 of it was items that was his
02 bill, so to speak, for writing what was characterized as a memo
03 me, although I think it's a presentation of some kind, on what
04 was characterized as defensive strategies that Edison would need
05 to be aware of, or undertake, in a forthcoming deregulated
06 market.

07 And this is issue, I think, that the committee

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08 faces at this point. And that is, given that the e-mail strings
09 seem to indicate both offensive and defensive conversations
10 between Edison and Dr. Backus and Perot, I asked the question,
11 whether or not Edison's memo that they received from Dr. Backus
12 was entirely defensive in nature.

13 And the answer to that question was yes.
14 I think from my perspective, that's an unresolved
15 issue.

16 CHAIRMAN DUNN: Mr. Heller, if I can go to you,
17 I'm going to ask you to answer an open ended question.

18 From your perspective in your position with
19 Edison, can you share with us a simple review of the dealings,
20 discussions, between Edison and Perot Systems and/or Mr. Backus
21 concerning Perot Systems and Mr. Backus' marketing of certain
22 market approaches, to try to use a generic term.

23 Please share with the committee from Edison's
24 perspective.

25 MR. HELLER: Through the spring and summer, there
26 were basically three -- three different conversations that we
27 had with Dr. Backus, and Perot in one of the three.

28 Dr. Backus came to us, was introduced to us, in I
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01 believe it was May of '97. I actually don't remember from who,
02 but he at that point in time had what I'd call a generic
03 presentation to us, basically saying, "You, Edison, Southern
04 California Edison, are essentially going to get taken to the
05 cleaners when the market opens up. You're very vulnerable, and
06 that you're going to be taken advantage of."

07 There wasn't a lot of material that went along
08 with it, but it was the first presentation.

09 We were worried about it at the time, so we
10 basically had a dialogue with him.

11 CHAIRMAN DUNN: Let me interrupt, if I may.
12 What were you worried about?

13 MR. HELLER: Exactly that issue, which was,
14 Southern California Edison basically was in the mode of
15 divesting its assets. It had a very short -- a very short
16 position to the market. And the way that the market was
17 structured, is that Edison could only be in a defensive position
18 because Edison and its ratepayers, actually, together were
19 vulnerable, and had, under the structure of the market, no
20 opportunity to make any money, but had a huge -- you know, a
21 huge potential to lose a lot of money should the market get
22 gamed.

23 So, we were worried about it long before
24 Dr. Backus came along, and were working internally, and had
25 other consultants talking to us about those issues.

26 He had a very provocative approach to this
27 concept. And so, we had to dialogue with him. That dialogue
28 ended. He then came back, and I don't know the exact timing,

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01 but it was shortly thereafter, with a presentation together with
02 Perot that basically said what they would like to do combined,
03 that's Backus and Perot, is sell us a software approach, system
04 dynamics or game theory -- we refer to it internally as system
05 dynamics so as not to confuse gaming and game theory -- together
06 with an offer to create a model of the California market. And
07 they were stating, and it was true, that they -- if you could
08 put the two things together, it would be a unique capability to
09 understand what our vulnerabilities were in the market, which
10 was an interesting concept again.

11 They then put together a letter of proposal, made
12 that pitch to us. Wanted two-and-a-half million dollars for
13 it.

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14 We were very unimpressed by the proposal, their
15 approach, and the people they brought to us, so that ended.

16 When that ended, George Backus came back -- this
17 is the third segment now -- Backus came back and said, "Well,
18 what I'd like to do is basically sell you my system dynamics
19 product, which is called CIGMOD. And I would like to basically
20 work with you, and take on a study that would outline all the
21 things that people might do to you in the market."

22 We hired him, as was indicated, and the contract
23 was not to exceed \$71,000. He sold us CIGMOD, which was a
24 system dynamics game theory approach, but modeled on the entire
25 U.S. market, using FERC Form 1 data. So, it wasn't a California
26 product. It was a national product, but it was a system
27 dynamics model. That was \$50,000.

28 And then he put together time and materials work,
0333 and he came up with ultimately a memo outlining 18 things that
01 might be done to Southern California Edison that we should be
02 worried about.

03 He delivered that product, and that's where our
04 relationship with him ended.

05 The relationship with Perot ended the one segment
06 back, when we basically chose not to do any work with that
07 Backus-Perot group.

08 CHAIRMAN DUNN: Give us the timeframes again of
09 the first, second, and third, approximate.

10 MR. HELLER: Approximately, the first time would
11 have been early May, perhaps a little bit earlier than that.

12 The pitch from Backus and Perot would have been,
13 I believe, mid-May.

14 And then our negotiations and hiring of Backus
15 would have been June or July. I believe July. All of '97.

16 CHAIRMAN DUNN: And after that point in time, any
17 further contact with Backus or Perot?

18 MR. HELLER: Not that I can recall.

19 I have my colleague, Lewis Hashimoto, if you
20 don't mind. I don't recall.

21 CHAIRMAN DUNN: That's fine. We've got him under
22 oath.

23 MR. HASHIMOTO: We took delivery of the memo from
24 George Backus in October of 1997. And we took delivery of the
25 CD, which contained the software for the CIGMOD model, later
26 than that. And we sent two of our managers to a training course
27 in Dayton, Ohio later that year -- I don't recall the exact
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01 month of that -- to evaluate and do acceptance testing of the
02 CIGMOD model.

03 CHAIRMAN DUNN: The Dayton, Ohio trip, was that
04 done in conjunction with Mr. Backus?

05 MR. HASHIMOTO: Yes, it was done in conjunction
06 with both Mr. Backus and his subcontractor, Mr. Amlin, who is
07 referred to in the e-mail string as the actual software
08 developer.

09 CHAIRMAN DUNN: Can you spell that for our court
10 reporter?

11 MR. HASHIMOTO: I believe it's A-m-l-i-n. He has
12 a separate company, Systematic Solutions, I believe.

13 CHAIRMAN DUNN: At any time that Perot Systems
14 and/or Mr. Backus was dealing with Edison in marketing the
15 various proposals to Edison, were you aware that they were
16 engaged in marketing efforts with any other utility or market
17 participant in California, or similar proposals?

18 MR. HASHIMOTO: No.

19 MR. HELLER: No.

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20 MR. HASHIMOTO: No, we weren't specifically
21 aware, but we were concerned about that issue. And so, as
22 you'll see in some of their e-mail traffic, they were talking
23 about our concern about exclusivity, which was when they were
24 pitching to us a two-and-a-half million dollar study. We were
25 saying, if you were going to do this kind of work for us for
26 this kind of money, we would not expect you to basically go and
27 work with other people, because, you know, they would get
28 incredible insights into confidential information about us. And

0335 01 also, we would have paid them two-and-a-half million dollars to
02 create a product we wouldn't want them peddling elsewhere.

03 So, no, I didn't know that they were talking to
04 others, but we were very concerned that they would talk to
05 others.

06 CHAIRMAN DUNN: I am assuming, Mr. Heller, you
07 are aware of our desire to locate, if it exists, the six-page
08 letter that is referenced in one of the memorandums, that was
09 going to be sent the next morning to an SCE lawyer, sharing what
10 the program really does.

11 MR. HELLER: Right.

12 CHAIRMAN DUNN: We've made a request of a whole
13 lot of folks to search and find, if it exists, that letter.

14 Have you made any efforts in that regard?

15 MR. HELLER: Well, as part of the search of all
16 of my information and my colleague Lewis, we went through. We
17 don't have it. I understand no one else at Edison has it. Nor
18 do I have any recollection that any memo was ever sent on that
19 topic.

20 CHAIRMAN DUNN: I understand that you don't
21 recall it. I believe that's been shared with Mr. Schreiber in
22 various discussions.

23 When you say as part of this process, just now,
24 in searching for documents, I assume you're referring to -- we
25 started this process a year-and-a-half ago. We've been at our
26 investigation for a long time.

27 Specifically, as to trying to locate this
28 document, what efforts are you aware of that SCE undertook to
0336 01 find this particular document?

02 MR. HELLER: I'm not aware of what Southern
03 California Edison did, but I personally went back through all my
04 electronic files and all my paper files about a month ago, when
05 the Legal Department of Southern California Edison contacted me
06 and said, "Look for anything that you might have with respect to
07 either Perot Systems or George Backus."

08 And I went through, as I said, all my electronic
09 and all my hard copies, and found nothing, including didn't find
10 anything referring to that six-page memo.

11 CHAIRMAN DUNN: In your opinion, are there other
12 efforts that could be undertaken within Southern California
13 Edison or Edison to attempt to locate that document that have
14 not been undertaken as of yet?

15 MR. HELLER: I wouldn't know. I think Mr. Isken
16 would probably be more qualified to answer that than me.

17 CHAIRMAN DUNN: We're going to avoid him right
18 now. We may wind our way back to him.

19 MR. ISKEN: I don't mind speaking to that, if it
20 would be helpful.

21 CHAIRMAN DUNN: Eric, please, share what's been
22 done.

23 MR. ISKEN: We received a request yesterday that
24 the committee had some urgent need to see that document. And
25 so, we immediately asked around the Law Department to see who

26 the lawyers might have been that would have received that memo.
27 All of the candidates that came to mind were
28 asked, and they did not have it. In fact, nobody, to my

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01 knowledge, even knows of such a memo.

02 CHAIRMAN DUNN: Okay.

03 MR. ISKEN: And previous to that, because we had
04 seen in connection with responding to these subpoenas, we had
05 seen reference to lawyers being talked to. So, a question was
06 asked by me, "Who was the lawyer," even before you asked for the
07 six-page memo. I wasn't even conscious of the six-page memo
08 particularly.

09 But I have not been able to figure out who -- who
10 the lawyer was, if there was a lawyer that was involved in these
11 discussions.

12 CHAIRMAN DUNN: Let me continue to follow-up,
13 Eric, and we're trying to get an understanding of exactly what's
14 been done.

15 I appreciate that, whether you or some other
16 individual within the legal arena, asked around to see if
17 anybody knew of that document.

18 Was there an actual search of all potentially
19 relevant files for that document?

20 MR. ISKEN: I believe so. I'm not mindful of any
21 other files that I would search to -- we made a very specific
22 request for all these Backus materials when we first learned
23 about the Backus issue. And the only ones we could find were
24 the one that happened to be in Mr. Hashimoto's files.

25 CHAIRMAN DUNN: Okay.

26 I'm aware that when any search for documents to a
27 corporate entity occurs, that search may envelope every aspect
28 of the corporation, save the Legal Department, because of

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01 concerns about attorney-client privilege.

02 So, I appreciate that Mr. Heller and others may
03 have reviewed their files. They're not in the Legal Department
04 there.

05 What I need to know is, let me start at the
06 basics. In 1997, approximately how many lawyers were in the
07 Legal Department?

08 MR. ISKEN: I'm not really prepared. I joined
09 the company in '97, and it was about 60, I think.

10 CHAIRMAN DUNN: I'm assuming, that was five years
11 ago, of that approximate 60 that may have been there at that
12 time, those 60 aren't still there. Some may, some may not be.

13 MR. ISKEN: Many of them are.

14 CHAIRMAN DUNN: Herein lies my concern. It's
15 that search that, in my view, needs to be done. It's all
16 encompassing. It's, I know, a lot of work.

17 But since the memo that's in question, which you
18 know about it, obviously, suggested it was sent to a
19 unidentified SCE lawyer, or was going to be, for us to really
20 nail down whether that in fact occurred, we're going to have to
21 touch upon every lawyer that was in the SCE Legal Department at
22 that time.

23 MR. ISKEN: I don't have any problem, Senator, in
24 sending an inquiry around to every lawyer in the Law Department
25 saying, "Do you have this document."

26 I can tell you that yesterday, we did go to the
27 individual who we thought would be most likely to have it,
28 because we do have a contract procurement group. And I've asked

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01 that guy, actually, a couple of times.

02 There's no recollection, at least there, of that

03 document.
04 But we have no problem making that inquiry.
05 CHAIRMAN DUNN: If you would, that would be
06 greatly appreciated.
07 Mr. Drivon, do you have some questions?
08 MR. DRIVON: Just a couple.
09 Mr. Heller, you indicated earlier in your
10 testimony that you actually used a little bit different
11 phraseology with respect to gaming theory. You called it, I
12 think, systems strategies?
13 MR. HELLER: System dynamics.
14 MR. DRIVON: Dynamics. And you do that, I think
15 you said, in order to avoid confusion between system
16 dynamics/gaming theory, and the practice of gaming the market;
17 is that correct?
18 MR. HELLER: Correct.
19 MR. DRIVON: Do you find that it's helpful to
20 change the lexicon in that way, to divide those two concepts?
21 MR. HELLER: Yes. System dynamics or game theory
22 is basically the mathematical exercise of trying to model how
23 players will participate within a marketplace. So, with the
24 creation of a model or a system, something that will allow you
25 to actually play the game.
26 Gaming is the tactics, or when people actually
27 take actions within the market.
28 So, one is more or less a framework, and the
0340 other one is actual actions. So, that's why we kind of refer to
01 one as system dynamics and the other one as gaming.
02 Gaming not necessarily to mean anything negative.
03 It's just the actions that people take to play the game. The
04 other one is to set up the game.
05 MR. DRIVON: Right. I mean, as has been said
06 here before today, gaming can be either acceptable,
07 unacceptable, legal, illegal, a whole range of possibilities;
08 correct?
09 MR. HELLER: Correct.
10 MR. DRIVON: And you heard Mr. Perot, if you have
11 distant memory, say, "Well this -- you folks really don't
12 understand this gaming business. All this really is, is just,
13 you know, Dr. Nash's Beautiful Mind expressing a mathematical
14 model."
15 But he left off the part about gaming, and
16 gamers, and the active part it; correct?
17 MR. HELLER: You have to set up the game, and
18 then you play the game, yeah.
19 MR. DRIVON: And you've seen as we've gone
20 through today the expression of various gaming opportunities as
21 set forth in a lot of these slides that we've shown here. And
22 some of those games could be considered legitimate. Some of
23 them are just down right not things that should be done; right?
24 MR. HELLER: Correct.
25 MR. DRIVON: I would assume that you have at
26 least a passing understanding of the basics of how self-created
27 congestion games could be put together?
0341 MR. HELLER: Yes, some knowledge, yes.
02 MR. DRIVON: Did you understand Mr. Gribik's --
03 you understand Mr. Gribik to be an expert in congestion
04 management.
05 MR. HELLER: I don't know him to be an expert in
06 that particular field, but he is -- he's a technically competent
07 person in that -- in that broad area, yes.
08 MR. DRIVON: And were you, in your capacity with

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09 Edison during the time that these presentations were being made,
10 or proposals being put forward by Perot-Backus, and then later
11 Backus, were you led to believe that Dr. Gribik and
12 Dr. Shirmohammadi had acquired special knowledge of the ISO
13 protocols and had been involved in the development of those
14 protocols?

15 MR. HELLER: I have very little memory of the
16 Perot people. I do remember George Backus, because he's a very
17 colorful person.

18 I guess the overall comment I'd make about the
19 Perot people, because I don't really -- aside from today, I
20 don't really remember them very well, is that we were very
21 unimpressed by the Perot team that they basically wanted to have
22 do this work for us.

23 MR. DRIVON: Did you hear Dr. Gribik say today,
24 in answer to one of my questions, that he conceived of how you
25 could set up a self-created congestion game? Did you hear him
26 make that answer?

27 MR. HELLER: Yes.

28 MR. DRIVON: What was your reaction to that
0342 answer?

01 MR. HELLER: It's -- technically he's correct.
02 You can't double-book -- and maybe Lewis will jump in if I'm
03 starting to go astray -- you can't within the system in
04 California double-book physical firm power. It was one of the
05 slides they said, "Well, what you do is, you double-book a
06 transmission." You can't really do that.

07 But the slide was actually -- didn't really say
08 that. It said, you'd book it firm, and then you'd sell an
09 option over on top of the firm. Now you can do that, but what
10 he said is, you can't do -- you can't double-book, which is
11 correct, but you could do what was on the slide, which is, you
12 could book the whole thing out firm, and then you could do
13 option contracts on top of it.

14 So, one's physical, and one's basically a
15 financial contract.

16 MR. SCHREIBER: Isn't that what the Attorney
17 General has gone after the generators for, that same behavior?

18 MR. HELLER: I don't know. As I said, you
19 couldn't -- the one thing that you can't do, though, is you
20 can't, as Paul -- as Gribik said, you can't double-book firm,
21 which is true, but that's not necessarily the only game you'd
22 play on transmission.

23 MR. DRIVON: And it's not the only game that you
24 can play with self-created congestion.

25 MR. HELLER: No -- yeah, that's a different
26 thing, yes. There's lots of things you can do.

27 MR. DRIVON: I mean, he told me that he didn't
0343 know how you would put together a self-created congestion
01 game.

02 That would be an unbelievable statement if he
03 had the degree of expertise that he's supposed to have; isn't
04 that true?

05 MR. HELLER: That really is kind of -- I --
06 probably, but that's kind of beyond me in terms of how you would
07 -- I don't know how one would create a self-created congestion
08 play like he was talking about.

09 Lewis?

10 MR. HASHIMOTO: My reaction from Dr. Gribik's
11 comments was that was taking an extremely narrow view in the PX
12 context of how these games could be played. And that he was, in
13 response to the question about double-booking, he was thinking
14

15 that physical power could not be double-booked from a single
16 generating unit.
17 When in fact, as Mr. Heller indicates, there are
18 games that one can imagine being played to profit from selling
19 the same power twice in a physical and a financial means.
20 MR. DRIVON: Or promising to relieve congestion
21 by cutting back on the delivery of nonexistent power to relieve
22 nonexistent congestion.
23 MR. HASHIMOTO: Yes. My reaction was that
24 Dr. Gribik was thinking about this in an extremely narrow
25 technical sense, rather than a larger sense of what was possible
26 to a marketer who is playing in both physical and financial
27 markets.
28 MR. HELLER: He was technically correct because
0344
01 he said, you don't get paid for relieving congestion, which is
02 true. That doesn't mean you can't make money off of congestion.
03 MR. DRIVON: Or off not relieving congestion that
04 never existed.
05 MR. HELLER: Yes, but he was technically correct
06 when he said you don't get paid for relieving congestion.
07 MR. DRIVON: So we asked Question Number One, and
08 he answered Question Number Two.
09 MR. HELLER: Or he gave you a very, as Lewis is
10 saying, he gave you a very specific example.
11 SENATOR PEACE: You ultimately determined you
12 weren't impressed with the Perot people, but you went into the
13 contract with a blow-hard.
14 MR. HELLER: Yeah.
15 SENATOR PEACE: Did you find him to be a
16 blow-hard after the fact?
17 MR. HELLER: Well, I found him to be a blow-hard
18 during and after the fact. He is -- he's a very interesting
19 person. He had some -- I mean, he's very aggressive. He was
20 very hard sell, but he had some very interesting concepts that
21 we were worried about.
22 As I said, long before he showed up, we were
23 worried about being gamed.
24 SENATOR PEACE: And then you bought a product
25 from him.
26 Did you make use of that product?
27 MR. HELLER: The product, well, we bought two
28 things from him. One is, we bought his consulting time, which
0345
01 was ultimately, he gave us a memo of 18 things that people might
02 do to us, which turned out to be reasonably useful. We did some
03 analysis of it, followed up on some things. That was one.
04 His CIGMOD product was sold -- was sold to us as
05 completely different, which was, here was a system dynamics
06 model that would actually work. Ultimately we didn't find it
07 particularly useful, and Southern California Edison really never
08 made any use of it.
09 SENATOR PEACE: And so, your hiring of Backus was
10 sort of a research effort to identify what kinds of things you
11 had to be looking out for, and then you hoped that his disk also
12 would provide you with some sort of tool to identify through
13 simulated, I assume, transactions what might be happening.
14 MR. HELLER: Ultimately, if the CIGMOD model
15 would have worked to our satisfaction, it could have been used
16 to basically design a -- design the game.
17 SENATOR PEACE: Now, Edison was amongst the
18 earlier folk to come to the ISO and the PX and complain that, in
19 fact, the market was being gamed.
20 MR. HELLER: Uh-huh.

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21 CHAIRMAN DUNN: Mr. Heller, we need you to say
22 yes or no for the court reporter.

23 MR. HELLER: Yes, that's correct.

24 SENATOR PEACE: So, was this product used in any
25 way in terms of your success in identifying that, or was it just
26 coincidental that you -- I'm trying to find out whether you got
27 any value out of this.

28 MR. HELLER: We got value out of the memo that
0346
01 basically outlined 18 games that people are going to basically
02 play to our detriment.

03 SENATOR PEACE: So you knew what to be looking
04 for?

05 MR. HELLER: Well, it was his work. We had our
06 own internal group. We had other consultants.

07 So yes, his was a valuable product, but not the
08 only one. We had a lot of -- we spent a lot of time and a lot
09 of effort basically looking at it. His product was useful in
10 that overall context. The software was not useful.

11 SENATOR PEACE: Why was the contact with Edison
12 International rather than with the utility?

13 MR. HELLER: There were contacts with both.
14 Lewis and I were both part of Edison International because
15 that's where the strategic planning group was. We had one
16 planning group for all of the corporation, in that we would
17 basically work and do assignments for the individual companies.
18 And we had a very strict affiliates policy, and it was heavily
19 policed and heavily audited. But there was one planning group
20 within the entire corporation.

21 SENATOR PEACE: So in this case, in your planning
22 group, corporate level planning group, were you entering into
23 this transaction for the benefit of the utility specifically?

24 MR. HELLER: Yes, and ultimately all of this was
25 reporting to the President of Southern California Edison.

26 SENATOR PEACE: So none of this product was
27 destined to Mission or to any of the other nonregulated portions
28 of the company?

0347
01 MR. HELLER: No, and Edison Mission didn't
02 really get -- they had no merchant business in California, and
03 really didn't get into the merchant business or trading until
04 late 1999, when they bought a plant in Pennsylvania. So, they
05 weren't even in this business, and aren't in this business in
06 California.

07 SENATOR PEACE: So you were exclusively buyers,
08 other than the utility -- the generation the utility still
09 owned?

10 MR. HELLER: And Edison Mission Energy had some
11 plants that they had built years before but were fully
12 contracted. So, they weren't --

13 SENATOR PEACE: So they weren't in the PX market?

14 MR. HELLER: No.

15 SENATOR PEACE: To what would you attribute the
16 speculation or the statements in the Perot memos that seem to
17 imply that Edison had an interest in offensive capability?

18 MR. HELLER: Um, I don't really know. I -- I was
19 a consultant with McKinsey and Company for 13 years. And as I
20 read all these memos going back and forth within Perot, it was
21 obvious they were very excited and thought they had a hot
22 prospect to bill a couple of million dollars to.

23 So, why they said some specific things, I don't
24 know. But it was very obvious from reading this, as I said,
25 from -- Lewis and I both worked at McKinsey and Company -- that
26 they just thought they had a real hot one here and were looking

27 forward to billing lots and lots of money.
 28 SENATOR PEACE: And they met with you, or had
 0348
 01 some sort of conversations with you, presumably both of you?
 02 Is that right?
 03 This is the point where it's a Perot-Backus, and
 04 they go back, and they had some e-mails amongst each other. And
 05 they say, "Now we've got to send some material to the lawyers."
 06 Can you connect that to any meeting you had, or
 07 discussion?
 08 MR. HELLER: I can -- Lewis and I talked about
 09 that specific Backus memo, when he's talking about that six-page
 10 memo. We can -- I can hazard a guess, because we did talk about
 11 it and have a hypothesis, but I don't know actually. But I can
 12 give you our theory on this.
 13 MR. DRIVON: Please.
 14 MR. HELLER: Um, he's talking about what the
 15 model really does. Backus' model was CIGMOD, which was a system
 16 dynamics model.
 17 I think, based on our conversations with him,
 18 that he was very worried about getting nailed with the
 19 exclusivity issues that we had brought up, because when we told
 20 him, combined with Perot, that if we were going to do this work
 21 with you, then we want exclusivity. We don't want you selling
 22 it to somebody else.
 23 CIGMOD was already basically in development, and
 24 there was -- there was a product CIGMOD at that point in time,
 25 which was a multi-client product. He wanted to sell to a lot of
 26 people using publicly available information.
 27 What I think he'd be worried about, and that's
 28 what, you know, our hypothesis is, that he basically wanted to
 0349
 01 make sure that if we went ahead and did a big study, that
 02 two-and-a-half million dollar thing, that he could get CIGMOD
 03 excluded from it.
 04 SENATOR PEACE: I'm not sure that that's
 05 connecting for me in terms of what I see in the language.
 06 Because what I see them saying is, we want to represent this as
 07 a defensive strategy, but we're going to communicate through the
 08 lawyers about what the product can actually do.
 09 What I'm trying to get at is, at some point, did
 10 you convey in any of your meetings to them the notion that they
 11 needed to send something to your lawyers?
 12 MR. HELLER: Not -- not that I can recall, nor do
 13 I think that I'd do that.
 14 As I said, our theory here is that he basically
 15 wanted to make sure that CIGMOD -- because he's saying, I've got
 16 to explain what the software really does, which is, as I said,
 17 his software was CIGMOD. He wanted to explain that that would
 18 be a system dynamics model, multi-client oriented using national
 19 data, and that if we were going to --
 20 SENATOR PEACE: And so you think that his concern
 21 is that you may have interpreted the capability of the software
 22 to be California market-specific, and perhaps also including
 23 information that would be somehow protectable?
 24 MR. HELLER: I don't think that's the -- I think
 25 what -- he was not worried about that, because, again, CIGMOD
 26 had no California information. It was national data with a
 27 system dynamics model.
 28 He didn't want -- we just said, "If we hire you
 0350
 01 guys, everything goes exclusive." And what he wanted to do is
 02 just say, "Exclude CIGMOD because that is mine. I own that."
 03 SENATOR PEACE: Did he say that to you in the

04 meetings?

05 MR. HELLER: Well, that -- yes. Well, he said
06 things like that, that CIGMOD was his product, and that that was
07 going to be a multi-client product, and that he wanted to be
08 able to sell that.

09 SENATOR PEACE: So he wanted to be able to
10 segregate the CIGMOD portion from the balance of this big \$2.5
11 million contract that otherwise would be exclusive?

12 MR. HELLER: That's how I read that -- that point
13 that he made in that memo, that e-mail.

14 MR. HASHIMOTO: Yes. My recollection is that he
15 had already sold the CIGMOD prospective end product to a dozen
16 or more U.S. companies as a multi-client project, and that he
17 was concerned about our expression that we didn't want him to
18 work on this sort of project to look at strategies and have the
19 freedom to go off and share these strategies with others, which
20 was why we were insisting on exclusivity.

21 Our hypothesis is that bringing in some
22 discussion with lawyers is some sort of reference to negotiating
23 the terms and conditions for the consulting services agreement
24 that would involved terms of exclusivity.

25 SENATOR PEACE: Now, obviously you chose
26 ultimately only to engage in a relationship with Backus, and a
27 relatively modest one at that, some \$70,000 worth of work
28 product, of which you're arguing, you really only got value out

0351 01 of the \$22,000 because you don't think the CIGMOD thing really
02 did much for you.

03 Now, looking backward with the benefit of 20-20
04 hindsight, I guess we could argue or postulate that maybe you'd
05 have been better off buying the Perot package, if in fact it
06 would have identified the gaming.

07 In theory, would you have been able to have
08 engaged in some sort of defensive measures to prevent being a
09 victim of the market manipulation?

10 MR. HELLER: I don't think -- well, our belief at
11 the time, and I still believe it, is that I don't think Perot
12 could have done a better job than the people we ultimately
13 worked with, internally and externally.

14 I mean, as you stated, we made a lot of
15 complaints. We were yelling very loud that we were getting
16 gamed. I don't think that Perot would have basically provided
17 us anything more in terms of value in that area.

18 SENATOR PEACE: You've heard me ask this question
19 of just about everybody that came up here, but I want to ask
20 you, too.

21 At what point do you believe FERC generically was
22 aware of the potential of these markets to be gamed?

23 MR. HELLER: I don't know about the timing.

24 SENATOR PEACE: Let me rephrase --

25 MR. HELLER: There were -- there were enough
26 people yelling and screaming that were getting gamed, and that,
27 you know, the ratepayers and the utilities are basically, you
28 know, being taken advantage of.

0352 01 SENATOR PEACE: Even before, I'd like to go back
02 to '94, '95, '96, as the discussions are happening, WEPEX is
03 happening, at Harvard.

04 Were there not discussions about the capacity to
05 game these systems?

06 MR. HELLER: I don't recall if there were
07 discussions with FERC at that time.

08 SENATOR PEACE: At what point when the filings
09 that Edison made in front of FERC, at what point did you start

10 noticing, or putting FERC on notice that there were concerns
11 about the market being gamed?

12 MR. HELLER: I'm not really sure of the timing.

13 MR. HASHIMOTO: My recollection is that even in
14 the 1996-97 timeframe, Southern California Edison's filings to
15 FERC were trying to call attention to inefficiencies in the PX
16 and ISO design, which had been raised both in the academic
17 community and critics from Harvard or elsewhere, as well as by
18 our own consultants.

19 SENATOR PEACE: Mr. Hogan being the chief critic;
20 right?

21 MR. HASHIMOTO: Right.

22 SENATOR PEACE: And the marketers and generators,
23 in their counterfilings, for lack of a better term -- I don't
24 know if that's the right name to call that -- as I recall, they
25 attributed the potential problems, or the developing problems,
26 at that time to Edison in particular, allegedly overscheduling;
27 is that -- I'm sorry, underscheduling; correct?

28 MR. HASHIMOTO: That was one of their claims,
0353

01 yeah.

02 SENATOR PEACE: Was there ever any conclusion to
03 these charges of underscheduling in terms of from an
04 investigative perspective? Was there ever any evidence found
05 that utility underscheduling was in fact occurring?

06 MR. HELLER: I'm not aware of an investigation
07 into that.

08 MR. HASHIMOTO: Not to my knowledge. I don't
09 think it was ever actually resolved.

10 SENATOR PEACE: Did any of these, whether from
11 Perot Systems or other consultants that you indicated that you
12 did hire, internal product, whatnot, any of the folks that you
13 put to task with respect to developing gaming theories,
14 speculating on what different kinds of market participation
15 might produce different reactions, as you went through those
16 processes, was any of that work product from any sources, Perot
17 or otherwise, ever deployed by Edison companies, regulated or
18 unregulated, in the California marketplace for the purposes of
19 generating higher prices in the market?

20 Did anybody, any Edison entity, any way to your
21 knowledge ever game the market in any way?

22 MR. HELLER: No. I mean, it would have been --
23 it would have been suicidal to do that, because Edison had a
24 massive short to the market. I mean, they'd sold most of their
25 gas plants. Well, they were told to sell half. They ultimately
26 ended up selling all of them, so they had a huge short to the
27 market.

28 So, to the extent that they could anything to
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01 increase generation prices on what they had left, they would --
02 if there was any gain on that, they'd lose, you know, massive,
03 massive amounts of money relative to what they could make.

04 MR. HASHIMOTO: To be specific, there were three
05 things we did as actions following the assessment of these
06 potential games or inefficiencies.

07 We devised a plan to try to advocate changes in
08 the ISO/PX design while it was going through its final stretch.

09 We shared our findings with the Market
10 Surveillance units at the PX and the ISO, and the Market
11 Surveillance Committee, and tried to get them to be aware of our
12 concerns about these flaws in the market.

13 And we set up our own internal monitoring system
14 to try to detect gaming as it might take place in the actual
15 market.

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16 SENATOR PEACE: And during this period of time,
17 in both the Market Surveillance Committees -- actually they have
18 different names, but we'll just call them both Market
19 Surveillance Committees -- in the Power Exchange and in the ISO
20 respectively, there were regular reports back to the full board
21 that, in fact, there was dysfunction in the market; is that
22 correct?

23 MR. HASHIMOTO: That was my recollection, yes.

24 SENATOR PEACE: And as these reports were made,
25 what happened at the full board level?

26 MR. HELLER: I don't recall what happened at the
27 full board level.

28 I do remember that, you know, we were claiming
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01 after kind of one of the first incidents in that summer of, I
02 guess, '99, that the impact of gaming had cost us hundreds of
03 millions of dollars.

04 I don't know how the board responded, but I do
05 know what Edison was saying at the time.

06 SENATOR PEACE: Let me just put on the record
07 myself here, during this very period of time, this is the point
08 at which there's a specific Market Surveillance report from the
09 Market Surveillance Committee in the PX which was altered by --
10 after interaction with the then CEO and members of the full
11 board.

12 And the CEO, I happened to have been the
13 beneficiary of a xeroxed copy of the original Market
14 Surveillance report, which I have shared with the Chair. That
15 report gets altered, and when I confront the CEO over why it was
16 altered, the response was, "I can't pick a fight with my
17 customers." Keeping in mind, their customers are also their
18 board members.

19 And this, again, brings us back to FERC's refusal
20 to approve literally the only material change in AB 1890 from
21 the PUC-FERC agreement, which Governor Wilson had committed to
22 Chairwoman Betsy Moler that he would not allow to be changed in
23 any way. Governor Wilson reneged on his commitment to Betsy
24 Moler in one context only, and that was the creation of a
25 nonstakeholder board, oversight board, that would be politically
26 appointed rather than economically dependent.

27 And had there been an oversight board, as
28 contemplated in AB 1890, in place, that Market Surveillance

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01 report would have -- that oversight board would have been able
02 to overrule the Power Exchange board, just as the oversight
03 board would have been able to overrule the ISO board when it
04 refused to keep the caps in place.

05 This whole issue has been made far more complex
06 than it really is. There's one simple act by FERC, and that is,
07 the alteration of AB 1890 is at the 100 percent root cause of
08 the ability of these private companies to manipulate the market.

09 The fact that they manipulated the market is not
10 a surprise. We expected them to attempt to manipulate the
11 market. FERC knew, or should have known, that they would
12 attempt to manipulate the market. But FERC was an unabashed
13 agent, philosophical believer, in the exact same attitude that
14 you see articulated by the blow-hard.

15 CHAIRMAN DUNN: Doctor.

16 SENATOR PEACE: Dr. Blow-hard and his sycophants
17 at FERC.

18 And that's the only -- I know nobody wants to
19 have a simple answer to this, because we've spent so much time.
20 We must have something complex to explain it.

21 It ain't complex. It's simple.

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CHAIRMAN DUNN: I'm going to go to Senator Morrow here in just one second.

Eric, the request, I may be mistaken on this, correct me if I'm wrong, I don't believe the committee has received the document, Mr. Heller, that you referred to that you received from Mr. Backus, including the 18 points that he made.

MR. HELLER: Oh, I thought you had, sir.

CHAIRMAN DUNN: If we do, I may not have seen it, or I may be confusing it with some other document.

MR. DRIVON: Perhaps it's cleverly concealed.

CHAIRMAN DUNN: He said, perhaps its' cleverly concealed in things we've already looked at.

MR. ISKEN: It is Bates Numbers P00049 through P00055.

CHAIRMAN DUNN: Okay, now I know which one you're referring to, Eric. That's what you've referred to as the 18-point memo or letter from Mr. Backus.

MR. ISKEN: Right. That's his final product?

CHAIRMAN DUNN: All right. I wanted to make sure.

MR. HASHIMOTO: CIGMOD is spelled, C-I-G-M-O-D, one word.

CHAIRMAN DUNN: All caps.

Senator Morrow.

SENATOR MORROW: Thank you, Mr. Chairman.

By way of background, and I'll begin with you, Mr. Heller, you're presently the President and CEO of Edison Mission Energy; correct?

MR. HELLER: Yes, sir.

SENATOR MORROW: How long have you held that position or that capacity?

MR. HELLER: Since January 1st this year.

SENATOR MORROW: January 1st of this year. First of all, Edison Mission Energy, that's the trading arm of Edison International; is that correct?

MR. HELLER: It's the independent power generator. We do some trading, but primarily we're a wholesale generator.

SENATOR MORROW: It's the generation side.

MR. HELLER: Yes, sir.

SENATOR MORROW: And that's entirely separate, of course, from Southern California Edison, the utility?

MR. HELLER: That's correct.

SENATOR MORROW: And is there, and tell me if there is, and I'm certainly no expert in this, but I'm given to understand that there is, or at least there's supposed to be, some sort of firewall between the generation component and the utility; is that right?

MR. HELLER: Yes, there is, and it's very heavily policed by -- by an internal group within Edison.

SENATOR MORROW: Look, you're talking to a layman here. To the best that you can make a layman understand, tell me how or what it is that Edison has done to create and maintain that firewall. What's done?

MR. HELLER: The basic element of that firewall is that no information can go from Southern California Edison to any of the unregulated affiliates. If an unregulated affiliate has some information or some work that might be of value to Southern California Edison, information can, if it's appropriate, be given to them as long as it's cleared, but it's kind of -- the firewall from the utility to everything else is kind of -- cannot be penetrated, is the basic design.

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28 SENATOR MORROW: Is it a one-way street? Is that
0359 what I'm hearing?
01 MR. HELLER: Essentially, yes.
02 SENATOR MORROW: So then, Edison Mission Energy
03 can give information to Southern California Edison, but not
04 vice-versa?
05 MR. HELLER: That's the basics, yes.
06 SENATOR MORROW: I apologize. We covered some of
07 this area earlier, and my ears perked up a little bit too late.
08 In terms of Edison's realization, or at least
09 having concern of gaming, the market being gamed under
10 deregulation, when did that first occur?
11 MR. HELLER: Our concern started as soon as the
12 whole deregulation process was being defined. That's been a --
13 that was a concern from the -- from the initial point, and has
14 remained an issue throughout.
15 SENATOR MORROW: And how did those concerns come
16 to your attention?
17 MR. HELLER: In the design of the market, and the
18 structuring of it, one always looks out for those sorts of
19 issues. Because again, Southern California Edison had -- had
20 nothing but a defensive posture to basically maintain, because
21 it could not, through this restructuring, AB 1890 and other
22 subsequent elements, make any money out of this. The best it
23 could do is basically not -- not lose out.
24 Southern California Edison and its ratepayers are
25 pretty much in the same position. So, it was strictly
26 defensive.
27 SENATOR MORROW: Well, Dr. Backus, of course, to
0360 begin with in May of 1997, came to Edison and basically alerted
01 you to the fact that you should be concerned about being
02 scammed; is that right?
03 MR. HASHIMOTO: Basically not scammed, but we're
04 going to get gamed. So, yes.
05 SENATOR MORROW: Gamed the way we're talking
06 here, that's not a good word. That's like manipulation in your
07 mind, right?
08 MR. HELLER: Well, and his -- some of his
09 material shows we were going to get gamed, and then there's
10 three types of gaming, as was mentioned earlier. There's
11 perfectly acceptable gaming. There is kind of some things that
12 were probably kind of marginal. And there is some things that
13 were absolutely should not have been done.
14 All of those -- all of those are being gamed,
15 whether they're legal, illegal, or kind of in a gray area.
16 Those are all -- all of them were concerns to us. And those
17 were things -- he brought up all of those sorts of issues to us.
18 SENATOR MORROW: You at least put a broadened
19 definition or interpretation to it.
20 MR. HELLER: I mean, if we're going to lose
21 money, whether we lose it to a perfectly legitimate game or to
22 an illegal game, if we and the share -- the ratepayers and the
23 shareholders' getting taken to the cleaners, it's --
24 SENATOR MORROW: Backus came to you folks in May
25 of 1997; is that right?
26 MR. HELLER: I believe so, or he may have come a
27 couple weeks earlier than May. I'm not really sure the first
0361 time he showed up.
02 SENATOR MORROW: But it was earlier or
03 thereabouts in May of 1997?
04 MR. HELLER: Yes.

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05 SENATOR MORROW: Did Edison -- when I say Edison
06 now, to your knowledge, all components of Edison, Southern
07 California Edison, Edison Mission Energy, ever have any
08 relationship with Dr. Backus and/or Policy Assessment
09 Corporation?

10 MR. HELLER: Well, beyond that one study that we
11 did for the \$71,000, no.

12 SENATOR MORROW: The \$71,000, I'm sorry, I
13 thought that was later than --

14 MR. HELLER: That was in the summer of -- that
15 would have been July of 1997.

16 MR. HASHIMOTO: Through October.

17 SENATOR MORROW: All right. Well, prior to May
18 of 1997, then, did Edison ever have any relationship with
19 Dr. Backus and/or Policy Assessment Corporation?

20 MR. HELLER: Not that I know of, but I don't
21 believe so.

22 SENATOR MORROW: It may be a minor thing, but I
23 want to bring it to your attention for an explanation.

24 I apologize. You don't have this here. I'll be
25 glad to give you a copy of it.

26 Members of my staff, the people up here, know
27 it'd have to be members of my staff if it involves computers, we
28 went on the Internet, and George Backus, apparently, has a

0362 01 website for him. And he indicates that he has worked with an
02 item called Promula.

03 Are you familiar with Promula?

04 MR. HASHIMOTO: I believe I've heard of Promula
05 as a software model.

06 SENATOR MORROW: He indicates, and again, I'll
07 show this to you, but this is a quote from his website,

08 "I have worked with Promula and
09 many other simulation languages/
10 platforms for nearly two decades."

11 Blah, blah, blah.

12 Then he goes on,

13 "Some Promula-based analytical
14 efforts include:

15 1. A regulatory and planning
16 energy demand forecasting for
17 Southern California Edison."

18 Is that news to you?

19 MR. HASHIMOTO: To my knowledge, Mr. Backus never
20 actually served Southern California Edison in advising them in
21 how to do short-term load forecasting.

22 In the course of discussions in his proposal, he
23 indicated that he was interested in serving us with that
24 capability, and he had that capability, but that was not one of
25 the services that we engaged with him in the period from May
26 through October of 1997.

27 SENATOR PEACE: Can you read that again, Senator?

28 SENATOR MORROW: Certainly. Let me read it to

0363 01 you, from the website, quote,

02 "I have worked with Promula and
03 many other simulation languages/
04 platforms for nearly two decades."

05 And I won't go on to the next --

06 SENATOR PEACE: Promula is a language?

07 MR. HELLER: I believe it's a software package.

08 SENATOR PEACE: So, it's not something that he
09 would own. It'd be something he's familiar with?

10 MR. HELLER: Yeah.

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SENATOR MORROW: Going on,
"Some Promula-based analytical
efforts include:
1. Regulatory and planning
energy demand forecasting for
Southern California Edison."

And he goes on.

SENATOR PEACE: Well now, as an old advertising
guy some familiarity with blow-hards, perhaps more than I would
want to admit, if you ready that carefully, it's very cagily
worded.

He doesn't really claim that he ever did any work
for Edison. What he says is that Promula is used by Edison.

It's a time-honored trick of how you expand your
base -- you appear to expand your base of experience by first
connecting your generic experience to things that are and
offered, and then you cite all the other -- all the would-be
clients that use the kind of thing you're familiar with. And

people read it casually, and they think you actually did work
for them. It's done all the time.

SENATOR MORROW: I mean, certainly, Senator
Peace, nothing would surprise me about Mr. Backus at this point.

But I do want to find out, at least verify, from
Edison whether or not they have had any relationship with him in
this context.

MR. HASHIMOTO: I'm aware that Southern
California Edison has used computer-based systems for
forecasting load for their managing their procurement.

But as of the point in time where I departed from
Edison International and went to the other side of the firewall,
I was not aware of them using Mr. Backus' services.

It might be possible that between the year 2000
and currently, they might have hired him.

SENATOR MORROW: Let me go back. I meant to
follow-up, and I apologize.

Mr. Heller, you've been in your present position
for about a year, was it?

MR. HELLER: I've been President and CEO since
January the 1st. Prior to that, I was President of Edison
Mission Energy, Europe, for two years. So, I left Edison
International to go to Edison Mission Energy in February of
2000.

SENATOR MORROW: And prior to that, where were
you?

MR. HELLER: I was Senior Vice President for
Strategic Planning and New Business Development for Edison

International from January 1, '96 to February of 2000, when I
went to Edison Mission Energy.

SENATOR MORROW: Where were you in 1995?

MR. HELLER: I was a partner with McKinsey and
Company.

SENATOR MORROW: Mr. Hashimoto, if I can ask you
your background? I apologize, but your position is --

MR. HASHIMOTO: I am currently a vice president
at Edison Mission Energy. I've held that position since
November of 2000, I believe.

SENATOR MORROW: And before that?

MR. HASHIMOTO: Before that, between June of 1996
and November of 2000, I was Director of Business Development at
Edison International.

SENATOR MORROW: And before that?

MR. HASHIMOTO: Prior to that I was with McKinsey

17 and Company as a practice consultant.
18 SENATOR MORROW: If I can invite your attention
19 to Tab 31. I don't have the page number. I have PSC 007228.
20 CHAIRMAN DUNN: Is there another Bates stamp
21 number on it?
22 SENATOR MORROW: We've been here before. This is
23 the Profit Maximization under the UK and US Deregulation.
24 CHAIRMAN DUNN: It's Page 010804.
25 SENATOR MORROW: Take a moment. I want to make
26 sure you find that.
27 Do you have that?
28 MR. ISKEN: Yes, we have.

0366
01 SENATOR MORROW: Obviously it reads as
02 self-explanatory: "Profit Maximization Under UK and US
03 Deregulation."
04 It appears to be a presentation by Policy
05 Assessment Corporation and Perot Systems. You have Dr. George
06 Backus up there.
07 First of all, are you familiar at all with this
08 document?
09 MR. HELLER: No.
10 SENATOR MORROW: Are you familiar at all with any
11 similar Power Point presentations that might be similar to this
12 from Dr. Backus, Policy Assessment Corporation, and/or Perot
13 Systems?
14 MR. HELLER: There was one -- I wasn't familiar
15 until we received the information off the Perot website.
16 But the first time when George Backus came to us,
17 there was some material that he was talking about in terms of
18 being gamed.
19 SENATOR MORROW: Was it in the form of a Power
20 Point presentation like this --
21 MR. HELLER: Yeah. It was provided to us from
22 you.
23 [Off the record discussion]
24 MR. HELLER: Yes, sorry. It's called "Proposal
25 for Real Time Competitive Response System," George Backus,
26 Policy Assessment Corporation.
27 SENATOR MORROW: Does the committee have that?
28 MR. HELLER: You provided it to us. It's got a

0367
01 number at the bottom.
02 CHAIRMAN DUNN: Objection. That does not answer
03 the question.
04 [Laughter.]
05 CHAIRMAN DUNN: Just kidding, Mr. Heller.
06 MR. HASHIMOTO: This is a document retained in
07 our files which we made available to the committee.
08 MR. HELLER: This was amongst the documents that
09 we provided.
10 MR. HASHIMOTO: I believe, but I am not
11 absolutely sure, that this is a hard copy of the presentation,
12 Power Point presentation, that Dr. Backus made to Mr. Heller in
13 early May 1997 at a meeting which I was not present.
14 SENATOR MORROW: Good enough, and I'll review
15 that thoroughly later.
16 Let me stay on this one for now, then I'll ask
17 you whether or not they compare to the one that you're referring
18 to.
19 This one, of course, is dated -- apparently it
20 was prepared for a January 13, 1998 presentation to Enron. The
21 page I want to direct your attention to -- I need some help on
22 this. We've been there before -- and you may not have it, but

23 we can put it on the screen. I know that because we've done it.
 24 The number is PSC 007258.
 25 CHAIRMAN DUNN: We need the other page number on
 26 it.
 27 SENATOR MORROW: That's all I gave before,
 28 because I don't have the other.
 0368
 01 CHAIRMAN DUNN: Alex, we need your help.
 02 MR. HELLER: Is this it? The one with the chess
 03 board on it.
 04 SENATOR MORROW: Yep, that's it.
 05 CHAIRMAN DUNN: Thank you, Alex, for your
 06 help.
 07 SENATOR MORROW: You probably don't have it.
 08 MR. HELLER: We don't have that, sir.
 09 SENATOR MORROW: Can you see that? Go ahead and
 10 take a moment to review it. Tell me whether or not you've that
 11 before.
 12 MR. HELLER: Aside from, I think, you showed it
 13 earlier in the day, no.
 14 SENATOR MORROW: So, I take it there's nothing
 15 comparable to that in the Power Point presentation that
 16 Dr. Backus had given you earlier, that you just referred to?
 17 MR. HASHIMOTO: That's correct -- well actually,
 18 if you look at the Power Point presentation, which was in our
 19 files which we made available to the committee, there is a
 20 similar page titled, "California Gaming," which does not have
 21 the same content.
 22 SENATOR MORROW: I don't have it at all in front
 23 of me. Does it have the bullets there?
 24 MR. HELLER: It's -- it doesn't have the bullets,
 25 but it has some of the same words. So, they took -- they've
 26 taken this California Gaming slide and reworked, and put it a
 27 dot point form, and added some more material to it.
 28 SENATOR MORROW: Let's deal with this one just
 0369
 01 for a moment. And again, I'll look at yours later.
 02 Obviously it says,
 03 "Abundant Complex Rules Cause
 04 Abundant Complex Gaming, Large
 05 Domain Between Genteel and
 06 Illegal."
 07 Then you have your six bullet points here.
 08 I just want to focus on the last three, if you
 09 could. That would be starting with the fourth bullet point
 10 down, "N/S," and I'm given to understand that means north/south,
 11 "generation can cause congestion
 12 that increases revenue for south
 13 generation despite congestion
 14 costs."
 15 Mr. Heller, I'll tell you my reading of that is
 16 basically that it's suggesting ways to gain profit or to
 17 maximize profit through congestion charges as a result of
 18 self-created congestion.
 19 I don't know if your interpretation of that
 20 agrees with mine. Does it?
 21 MR. HELLER: Yes. It would be both congestion
 22 charges and just getting the price of electricity up in one of
 23 the two markets, north or south. Not just congestion charges,
 24 but the actual price of energy.
 25 SENATOR MORROW: And you would agree, that would
 26 fall under your broad definition of gaming; wouldn't it.
 27 MR. HELLER: Oh, yeah. It's a form of gaming.
 28 I'm not sure if it's illegal, but it's certainly a form of

0370

01 gami ng.
 02 SENATOR MORROW: It's not something you would
 03 like to have played on you, would you?
 04 MR. HELLER: No, sir, and as I said, we were
 05 massively short to the market, so any games like that came right
 06 out of the ratepayers' and not of Edison's hide.
 07 SENATOR MORROW: Okay.
 08 The second to the last bullet,
 09 "Force interzonal constraint
 10 that hurts competitor worse."
 11 What do you understand that to mean?
 12 MR. HELLER: I have to defer to Lewis on that,
 13 I'm sorry.
 14 MR. HASHIMOTO: I would speculate that he's
 15 referring to some strategy where a generator or owner of
 16 generation and transmission could create a congestion charge
 17 which was more adverse to a competing generator than to oneself.
 18 SENATOR MORROW: And last one.
 19 "Build plant at interconnect to
 20 cause congestion problems."
 21 Is there any way you can conceive of that being
 22 an appropriate gaming?
 23 MR. HELLER: I don't consider it appropriate, but
 24 I don't really see that one actually working.
 25 SENATOR MORROW: Let me ask you, at any time has
 26 Dr. Backus or his company, or Perot Systems, ever made this
 27 pitch to you, particularly with those three dots, the three last
 28 dots that we referred to?

0371

01 MR. HASHIMOTO: The page in the presentation
 02 which you did provide to Mr. Heller does not include those three
 03 specific dot points.
 04 SENATOR MORROW: Then at any time has Dr. Backus
 05 or Policy Assessment Corporation made a pitch in any other form
 06 to you along these lines, saying that they can provide these
 07 services to game the market in this way?
 08 MR. HELLER: No. Dr. Backus, though, in that
 09 18-scenario memo to us outlined all kinds of things that could
 10 done to us. Not a suggestion of things we should do, but kind
 11 of it was a memo of here are the things that are going to happen
 12 to you.
 13 SENATOR MORROW: And that was in or about May of
 14 1997?
 15 MR. HELLER: No, no. Sorry. That was after we
 16 turned him and Perot down, he came back and we hired him. And
 17 that was that study that went from July until October.
 18 SENATOR MORROW: So, that was subsequent to May
 19 of 1997.
 20 MR. HELLER: Yeah.
 21 SENATOR MORROW: Afterwards?
 22 MR. HELLER: Yeah.
 23 [Hereafter, the rest of this
 24 hearing was transcribed solely
 25 from audio tapes.]
 26 CHAIRMAN DUNN: Evelyn, and correct me if I'm
 27 misstating this, since we're audio taped, as is traditional with
 28 any committee hearing, and most committee hearings other than

0372

01 Rules don't have a court reporter there, assuming, Evelyn,
 02 you're not able to go forward with the disk as is, what we will
 03 do is continue without Evelyn's services. Although, this is a
 04 really low excuse for Evelyn to get out of here. But we'll just
 05 have to rely on the audio tape at this point in time.

AFTERNOO.TXT

06 It's nearing 8:30, and I said we were going to
07 finish at noon, I think. So we're pretty close to my usual
08 estimates. Not bad.
09 Why don't we just do that. Evelyn, we'll let you
10 go at this point in time, and we'll just have to rely on the
11 audio tape at this point forward.
12 Keith, you'll log it here for later transcription
13 purposes.
14 We're just waiting for some copies, and then
15 we'll go back to Senator Morrow.
16 SENATOR MORROW: I don't think it's in the book
17 here.
18 Gentlemen, we've had put up there, as you can
19 see, it's Bates stamp 00046. And it appears to be a page out of
20 a Power Point presentation, or something like that.
21 Obviously, it's identified as, "Future Games."
22 It appears to come from, if you look at the lower right-hand
23 corner, Policy Assessment Corporation, Dr. Backus' group.
24 If you read the substance, go ahead and take a
25 moment to do that.
26 Is this the first time you've see it, the
27 document?
28 MR. HELLER: Yes.

0373
01 MR. MORROW: Go ahead and take a moment to
02 familiarize yourself with it.
03 MR. HASHIMOTO: Sir, this appears to be almost
04 exactly the same content as the prior page's last three dot
05 points, which explain more fully.
06 MR. HELLER: It looks like another version of
07 that other slide.
08 SENATOR MORROW: It does.
09 The last three bullet points,
10 "The north to south generation
11 can cause congestion and
12 increases revenue for south
13 generation despite congestion
14 costs."
15 The issue dealing with interzonal constraint and
16 the competitors, and building plants that interconnect to cause
17 congestion problems.
18 Of course, what's interesting about this is, it
19 says -- the differences, however, it has "Future Games," of
20 course, as the title. And directly below that, it says,
21 "After 5x plus years, social
22 efficiency issues will demand
23 PoolCo like system."
24 Would you have any clue what that might mean?
25 MR. HASHIMOTO: I would speculate that this is
26 Dr. Backus' vision that society will converge on some sort of
27 solution to deal with the problems that arise from various sorts
28 of gaming.

0374
01 SENATOR MORROW: Okay, well, I represent to you,
02 and I understand, and we appreciate it, that Edison has faxed a
03 number of documents to the committee over recent weeks,
04 including this document. In fact, I don't know if you have a
05 copy or if you can look up here.
06 If you'll look in this thing. I'm at the very
07 top e-mail -- not e-mail but fax, June 26, '02. If we can blow
08 that up, that's good.
09 June 26, '02, 11:06, from -- just go more over to
10 the right and see there's a telephone number there. It looks
11 like a 1-626-302-1904.

AFTERN00.TXT

12 I'll represent to you, that's the telephone
13 number of Elizabeth Matthias, who's an attorney for Southern
14 California Edison. Don't take my word for it. You can take a
15 look at your own website for that.

16 But that's not the date I'm really interested in.
17 I'm interested in the date below that.

18 MR. HASHIMOTO: Sir, it turns out that this page,
19 titled "Future Games," is actually in the same document that was
20 discovered in my file cabinet, which I described to you as
21 having this other page titled, "California Games."

22 So, it would appear that the presentation which
23 was made to Mr. Heller in early May 1997 included the page
24 titled, "California Games," which did not have the three dot
25 points. And had a separate page, titled, "Future Games," which
26 is this page, describing in detail these three games.

27 At some later point in time, Dr. Backus must have
28 combined them into a single page titled, "California Games."

0375

01 SENATOR MORROW: Okay. And this document was
02 found in your cabinet?

03 MR. HASHIMOTO: Yes. This is the -- my
04 recollection is that this is the hard copy of the Power Point
05 presentation that Dr. Backus provided to Mr. Heller in early May
06 1997, a meeting which I did not attend.

07 SENATOR MORROW: Well, we read the fax mail date
08 here. Apparently it was faxed from Southern California Edison
09 to the committee on June 26 of this year.

10 But again, I'd like to refer your attention below
11 that, to another fax mail date. Can you see that?

12 Just so we're not mistaking, can you read that,
13 Mr. Heller? See if you can recollect that.

14 MR. HELLER: Yeah, I can read it.

15 SENATOR MORROW: Go ahead.

16 MR. HASHIMOTO: It looks like it says 5/5/95.
17 And my belief is that that is an incorrect date stamp on the fax
18 machine. I have the original of that document here in my hand.

19 SENATOR MORROW: It says 5/5 or 6/95, 5:58,
20 Edison Mission Energy.

21 MR. HASHIMOTO: The original document from which
22 that page is drawn is here in my hand. It was in my file
23 cabinet. I believe it is the hard copy that was presented to
24 Edison International on May 1997. And therefore, I believe that
25 the date stamp from the fax machine on there is incorrect.

26 SENATOR MORROW: You have the original?

27 MR. HASHIMOTO: This is the original.

28 SENATOR MORROW: Can we see the original?

0376

01 MR. HASHIMOTO: Sure.

02 SENATOR MORROW: Bear with me, I'm sorry.

03 Mr. Hashimoto, did you physically receive this
04 yourself?

05 MR. HASHIMOTO: I did not. My recollection is
06 that after the meeting in May 1997, which Mr. Heller attended,
07 he gave me his only hard copy of that document.

08 SENATOR MORROW: This document.

09 MR. HASHIMOTO: Yes.

10 SENATOR MORROW: And Mr. Heller, when did you get
11 this document?

12 MR. HELLER: I would have received it from George
13 Backus back in early May '97.

14 SENATOR MORROW: May of 1997.

15 SENATOR PEACE: How did you manage to fax it in
16 '95?

17 SENATOR MORROW: That's the \$2 question.

AFTERNOO. TXT

18 SENATOR PEACE: Look, it's silly. If you
19 understand the way the market is crafted, let's assume that they
20 did the \$2.5 million deal. And let's assume that somebody
21 thought they should get into an offensive strategy.

22 The only thing you could ascertain from that is,
23 they're incredibly stupid. Because there is absolutely nothing
24 they could do about it.

25 For better or for worse, and for our consumers it
26 ended up being very much for the worse, the way the market was
27 crafted, the utilities were 100 price takers.

28 Now, the only utility out of the three that was

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01 substantially different from that in any measurable way was
02 PG&E, because it owned so much hydro. And because the hydro --
03 and even then, hydro was basically bid in at zero for most of
04 the time, but they theoretically had such volume that they could
05 effect, you know, the price in the marketplace.

06 If they had some information and some ability to
07 do something, they couldn't economically benefit from it. It'd
08 be impossible.

09 And then you look at Edison's structure. Mission
10 is not a trading company.

11 MR. HASHIMOTO: Sir, if I may interject.
12 I see that the other documents that were faxed
13 from my office, out of my filing cabinet, to the committee via
14 the SCE lawyer have the same incorrect date stamp on it.
15 They're all -- given the procurement order, which is dated
16 August 25th, 1997 has a fax date stamp saying 5/5/1995.

17 SENATOR PEACE: And was that fax machine provided
18 by Perot Systems?

[Laughter.]

20 MR. HELLER: It's Lewis' machine.

21 CHAIRMAN DUNN: Mr. Drivon, I believe you have a
22 few questions.

23 MR. DRIVON: I do.

24 Were any Perot Systems people present at the
25 Backus presentation to you?

26 MR. HELLER: Well, there were, as I said, three
27 different interactions. This is to my recollection, because I
28 don't remember the Perot people very well. But not in the first

0378

01 one, when Backus basically came and met us for the first time?

02 At the second one, which was relating to their
03 big pitch for the two-and-a-half million dollars, while I don't
04 remember them, I'm certain that there were some Perot people
05 there.

06 And after we turned them down, when Backus came
07 back there were no Perot people involved anymore.

08 So, it was in that middle one where there were
09 some Perot people.

10 MR. DRIVON: Have you ever suggested that any
11 information be cycled through an attorney to protect a document?

12 MR. HELLER: No.

13 MR. DRIVON: You know what I'm talking about.

14 MR. HELLER: Oh, yes. I know what you're talking
15 about, but no.

16 MR. DRIVON: The other thing is, you said that as
17 far as the detection of games being run on you, and of gaming in
18 the market in general, that you had your own group that was
19 looking at that?

20 MR. HELLER: That's correct. There were a lot of
21 people working on it. Lewis was working on a very large team
22 that included internal people plus some external consultants.

23 MR. DRIVON: They were essentially doing market

24 monitoring for you?
 25 MR. HELLER: Yeah. After we did this work with
 26 George Backus, and basically did some of our own work, we set up
 27 our own internal market monitoring group, headed up by a guy
 28 named Gary Stern, who subsequently wrote some memos that have --

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 01 MR. DRIVON: I have to tell you, we were told,
 02 Senator Dunn and I were in Mr. Stern's conference room 15 months
 03 ago. And we were told that there was such a market monitoring
 04 group.
 05 And then, for about a year after that, we were
 06 told there was no such market monitoring group or information.
 07 Now I understand there was a large group of
 08 folks, including outside consultants, who were performing that
 09 task at Edison; correct?
 10 MR. HELLER: Let me clarify it.
 11 There was not a large group doing market
 12 monitoring. There were people following the market. There were
 13 a large number of consultants and other people working more
 14 broadly, which was getting gamed and basically how we're going
 15 to --
 16 MR. DRIVON: Forget the word "large." You had a
 17 market monitoring function in place at Edison from, I think you
 18 said, before the market actually started.
 19 MR. HELLER: No, sorry. That's what I'm saying,
 20 let me clarify.
 21 There were a lot of people working on the topic
 22 of the market and being gamed. So that obviously you wouldn't
 23 be monitoring the market before it started.
 24 Subsequent, and Lewis, you can help me with the
 25 dates here, that we did set up an internal group to basically
 26 monitor the market after the market started.
 27 MR. HASHIMOTO: Let me put it this way. There
 28 was first a project, and then there was the unit. The project

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 01 was to identify the nature of inefficiencies in the market, or
 02 potential games that could be played against Edison and its
 03 ratepayers, and what to do about it.
 04 The unit itself is relatively small. It consists
 05 of Dr. Stern and four, I believe, reports.
 06 MR. DRIVON: Okay. Have either of you any clue
 07 as to why we have been told for the last year that such a group
 08 didn't provide that function?
 09 MR. HASHIMOTO: I would speculate that the group
 10 feels that it has inadequate information to effectively conduct
 11 market monitoring.
 12 Edison, as a market participant, does not get
 13 access to key information that would provide the smoking guns
 14 for demonstrating that games, specific games, are being played,
 15 which is why a large part of our action was to -- in the
 16 project, was to attempt to alert the Market Surveillance
 17 Committee, the Market Monitoring Unit at the ISO and at the PX
 18 of the nature of possible games that could be played.
 19 MR. DRIVON: In other words, the four-person plus
 20 Dr. Stern group somehow came to the conclusion that they had
 21 accomplished so little of importance that we should be -- it
 22 should be communicated to us that they actually just didn't
 23 exist.
 24 MR. HELLER: I wouldn't say that they didn't
 25 exist. As Lewis was saying, that -- I don't think that they
 26 would call themselves a market monitoring group, because they
 27 did not have access to the sort of information that would be
 28 required for them to call themselves market monitors.

AFTERN00.TXT

01 MR. DRIVON: So, perhaps the problem is that
02 sometime between the first meeting and now, the lexicon that we
03 were using to attempt to identify our desires and concerns with
04 respect to that information somehow morphed into a form that no
05 longer required the information be passed to us?

06 MR. HELLER: I'm not sure I'm following you.

07 MR. DRIVON: That's okay.

08 CHAIRMAN DUNN: Let me ask one question.

09 Mr. Heller, who were the outside consultants that
10 may have assisted with respect to any market surveillance
11 activity?

12 MR. HELLER: Again, the definition, I wouldn't
13 necessarily call it market surveillance because it was the
14 project before the market actually opened.

15 The consulting firm that we were using at the
16 time was NERA.

17 CHAIRMAN DUNN: Spell that for me.

18 MR. HELLER: It's N-E-R-A, all capitals.

19 What does it stand for?

20 MR. HASHIMOTO: I believe it's National Economic
21 Research Associates.

22 CHAIRMAN DUNN: Based out of where?

23 MR. HASHIMOTO: London and Cambridge,
24 Massachusetts.

25 CHAIRMAN DUNN: All right.

26 Any other questions from the committee?

27 SENATOR PEACE: Yes, I want to go to Larry's
28 point here.

0382

01 I think people have forgotten the history here.
02 If there's any perception that Edison didn't blow
03 the whistle loud enough about what was going on, it is a totally
04 inaccurate perception.

05 CHAIRMAN DUNN: I don't think, to be honest with
06 you, Senator Peace, I don't think that was the line of
07 questioning from Mr. Drivon. Let me step in the shoes here of
08 Mr. Drivon.

09 We've been frustrated because we've been trying
10 to get access for a year-and-a-half now to materials that
11 Mr. Stern and his working group may have generated. Internal
12 materials with respect to their activities.

13 Mr. Stern was wonderful in our meeting with him,
14 and said, you know, obviously he's not the decision maker, but
15 he would be happy to share all of his materials with us.

16 In the past couple of weeks, after some rather
17 tense phone calls -- not just with you, Eric, but with others --
18 they're beginning to show up.

19 And what I think you're hearing from Mr. Drivon
20 is just a fairly high level of frustration as a result of that,
21 not the suggestion that Edison wasn't, to use your term, Senator
22 Peace, blowing the whistle on what may have been going on. Not
23 at all. It just, we've been frustrated as far as why haven't we
24 gotten those materials yet.

25 We think we've corrected the problem now, after,
26 as I said, some tense conversations in the most recent week or
27 two. And hopefully, we've overcome that problem.

28 But that's what Mr. Drivon was referring to.

0383

01 MR. DRIVON: That's right.

02 Our interest, obviously, I agree with Senator
03 Peace in terms of what Edison's motivations had to have been in
04 that situation.

05 But we, of course, were interested in what you
06 folks, as people who well understood the market, knew about who

AFTERN00.TXT

07 was doing what to whom, when, and how. That's what we were --
08 even if it was incomplete, it was way more than we knew.

09 SENATOR PEACE: At that time, contemporaneously,
10 Edison is coming to the ISO. They're coming to me. I go to the
11 ISO, communicate. I immediately get attacked by every consumer
12 group in the state, and Enron, and IEP as being a tool of the
13 utilities.

14 So, what you're dealing with in part in some of
15 this is a little bit of shell-shock. I mean, you have the
16 utility that stood up, told the truth. They were victimized.
17 And now we're busy over here, you know, handling the way --
18 believe me, one ISO board member quit because I was allegedly
19 exercising inappropriate political influence on the ISO board at
20 a time when the ISO board wouldn't put a cap in effect.

21 You had Sempra Energy sitting out there, while
22 their own customers were getting hammered. I had to beat the
23 crap out of SDG&E to get them to support a cap, despite the fact
24 it was their customers that were getting beat up.

25 And they ultimately came around, I think just
26 because it would have been bad public relations for them not to.
27 Now ultimately, to their credit, after almost the whole summer
28 experience, changed their position and became advocates for a

0384 system-wide cap. But a long time getting there.

01 You had the want-to-be Enron, PG&E, who, you
02 know, just basically wanted to be Enron, but didn't know how to
03 be it, who was busy engaging in every kind of activity they
04 possibly could to morph themselves into becoming an Enron-like
05 company. Which is why they got themselves caught in a very
06 different position.

07 Each of the three utilities had different
08 strategies, and different histories, and whatnot.

09 And I really apologize for making fun of the date
10 stamp issue. But with all due respect, if you -- after two
11 years of Members of the Legislature paying attention to this
12 stuff, we ought to understand enough about the market and the
13 relative position of the participants that the date stamp issue
14 would have never risen to a level of relevance because we would
15 have understood, there was no economic incentive for this
16 particular market player to be on the offensive side of the
17 equation. First thing, they would need the tools to do it if
18 they wanted to be offensive. They didn't have the tools.

19 We diminish -- this is part of why we haven't
20 been as successful in Washington and in the press, and
21 everywhere else, because we get distracted by all the
22 complexity, and the rules, and documentation. And we run off
23 down cul-de-sacs.

24 And that's exactly what the industry wants done.
25 That's precisely what their agenda is. And they kept
26 California's attention off of Washington, and off of the key
27 culprits, until the last 12 months. And we ought not to be

0385 allowing ourselves to be distracted for one minute more.

01 So, to the extent that that seems like a lecture,
02 I apologize for it. It is a lecture; it's meant to be.

03 And I hope that we, as Californians, whether we
04 happen to be customers, politicians, business people in the
05 market, and this would go to all these large customers who
06 continue to demonstrate their fidelity to some sort of bizarre
07 philosophy as opposed to their own economic interests, better
08 start acting in the interests of protecting California's
09 interest, and recognize that our companies are assets. Our
10 employees are assets. Our ratepayers are assets.

11 And we've got to start acting more like the
12

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13 Texans act. There's a reason. And this is the answer to the
14 questions I asked of Mr. Perot earlier. The reason why the
15 Texans kick our butt consistently, the reason why they're owning
16 our companies, and reason why we don't have corporate on our
17 ship in more and more companies across the board, is because the
18 Texans stick together.

19 You don't see the Texas Congressional delegation
20 going back to Washington, dividing votes when it comes to an
21 issue of protecting Texas. You didn't see Texas open the
22 market, despite the fact they -- even after they engaged in a
23 lot of protectionism in their opening of their market, and
24 they're having problems with their market. But you saw them
25 protect their home-base utilities, because they knew it was jobs
26 for their people and business relations with their people.

27 We spent three years in this state beating up our
28 own companies, trying to find some reason to explain this whole

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01 situation, because somebody in California did it, whether the
02 Legislature did it, or the PUC did it, or our companies did it.

03 And you know what? At some point, Californians
04 ought to stand up and recognize, nobody in California did this.
05 It was done in Texas, and it was done in Washington. Period.

06 CHAIRMAN DUNN: All right, any other questions?
07 Our Texas Senator has arrived. I've always said
08 this is an uncontrollable committee.

09 Senator Morrow.

10 [Laughter.]

11 SENATOR MORROW: I just want to go to Tab 18, the
12 e-mails. Do you have that? That'll be 000558.

13 MR. HELLER: We're there.

14 SENATOR MORROW: Referring to the first e-mail,
15 the one that's dated May 7th, 1997, 11:05, from Alan Suding to
16 the distribution list there.

17 The first paragraph, it states,
18 "As a follow-up from the group
19 meeting McMenamin had which
20 included Paul and George, George
21 was invited in yesterday by
22 Treasurers to talk with a group
23 of [Southern California Edison]
24 [Vice Presidents] which included
25 Willie Heller"

26 That'd be yourself, I take it.

27 First of all, the term "Treasurers" there, what
28 does that mean, if you have an idea? Who are the treasurers

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01 that would be referring to?

02 MR. HELLER: Lewis correct me if I'm wrong, there
03 was a modeling group within -- Treasurers?

04 MR. HASHIMOTO: The treasurers generally refers
05 to the Treasury Office, or Treasurer's Office of Southern
06 California Edison.

07 SENATOR MORROW: All right. Well, it refers to
08 the meeting which included Willie Heller, Strategic Planning,
09 and Vikram Budhraj a.

10 Mr. Heller, first of all, is that an accurate,
11 what I just read in this e-mail, is that accurate? Did that
12 meeting take place?

13 MR. HELLER: I don't recall, but I assume it's
14 correct.

15 SENATOR MORROW: You don't recall having a
16 meeting at all in which Mr. Vikram Budhraj a was present with
17 Dr. Backus?

18 MR. HELLER: No. I do recall having a meeting

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19 with George Backus, but I don't recall Vikram being there. But
20 I don't doubt that he -- I don't doubt that he was.

21 SENATOR MORROW: All right.

22 In the second paragraph it says,

23 "The VP meeting turned out to be
24 a tough group interview of
25 George."

26 George referring to Dr. Backus, I believe,

27 "He was grilled particularly
28 hard by Willie Heller."

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01 I mean, from what you do recollect, would that be
02 a fair and accurate description of the meeting?

03 MR. HELLER: Yes.

04 SENATOR MORROW: So you did grill Dr. Backus.

05 About what?

06 MR. HELLER: Um, George Backus is a very flowery,
07 verbose person. You know, he came with the concept that
08 Southern California Edison was going to get taken to the
09 cleaners by being gamed, and had a short presentation to make on
10 that. And I would have pushed him very hard on that. I don't
11 doubt that I pushed him very hard in that meeting.

12 SENATOR MORROW: That presentation, does that
13 include the documents we referred to with the future games?

14 MR. HELLER: Yeah, I think that's the -- yes.

15 SENATOR MORROW: So, all of that was discussed,
16 about the potential games that could be played; is that correct?

17 MR. HELLER: Yes, everything in that package,
18 yeah, I would assume.

19 SENATOR MORROW: Okay. And if Mr. Budhraj was
20 present, he would have heard the same thing you did, and have
21 the same documents; correct?

22 MR. HELLER: Yes.

23 SENATOR MORROW: Going on down, I guess the third
24 paragraph down, it says,

25 "This project is very confidential
26 within Edison."

27 First of all, is that a true and accurate
28 statement?

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01 MR. HELLER: No, because there was no project
02 within Edison. This was a pitch from George Backus that didn't
03 even actually solicit business. It was just a presentation, so
04 there's no project.

05 SENATOR MORROW: Then how about the presentation
06 itself, or the prospect of entering into such a project? Was
07 that confidential at all?

08 MR. HELLER: No. As I said, I'm a bit confused
09 by his point, because there was no project pitched at that point
10 in time. It was just him making a presentation to try and prove
11 to us that he was a very smart guy, and that, you know, we were
12 -- we were at risk of having -- having our pockets picked and
13 having all these things done to us.

14 But there was no -- again, as far as I can
15 recall, there was no pitch or proposal made at that point in
16 time.

17 SENATOR MORROW: Earlier in testimony we heard
18 the general discussion, the general belief, that the ISO was
19 unaware of the Perot-Backus gaming presentation until October
20 1997 when, I think, it was an SDG&E executive told Mr. Jeff
21 Tranen with the ISO his concerns.

22 If Mr. Budhraj were present and heard the same
23 presentation that you heard, he would be aware of the pitch by
24 Perot and Dr. Backus setting forth these types of gaming

25 concerns; wouldn't he?
 26 MR. HELLER: No, as I said, there was two very
 27 different ones.
 28 The first presentation that Vikram and I both
 0390 attended was the package that Dr. Hashimoto showed you, which
 01 was, there's a lot of bad things people might do to you. There
 02 was no proposal; there was no pitch. It was just a
 03 presentation. It was a teaser, in effect.
 04 And that was not where -- there was no Perot to
 05 that. That was strictly Backus.
 06 SENATOR MORROW: I'm sorry, did that presentation
 07 include or not include what you showed me, the original
 08 documents that include the page dealing with the future games?
 09 MR. HELLER: I believe so, but let me just check
 10 really quick.
 11 MR. HASHIMOTO: Yes, that is the document which
 12 includes the Future of Games page.
 13 SENATOR MORROW: So, Mr. Budhrajia would have had
 14 access to that document?
 15 MR. HELLER: Yes.
 16 SENATOR MORROW: Which sets forth at least three
 17 future games; correct?
 18 MR. HELLER: Correct.
 19 SENATOR MORROW: And that comes from Policy
 20 Assessment Corporation.
 21 You're aware that Mr. Budhrajia is a member of the
 22 Governing Board of the ISO?
 23 MR. HELLER: At that time, I believe he was,
 24 yeah.
 25 SENATOR MORROW: And I think in May, sometime in
 26 May 1997, he assumed that position. He also assumed a position
 27 with to the California PX; isn't that true?
 0391 MR. HELLER: I'm not -- I know he was on the ISO
 01 board, but I didn't know he was on the PX, but that could be
 02 true.
 03 SENATOR MORROW: Okay, thank you.
 04 SENATOR PEACE: I think Vikram was actually on
 05 the PX board, and he was on a committee. He wasn't actually a
 06 board member on the ISO board. I think he was head of one of
 07 the key committees. I can't remember whether he was a --
 08 SENATOR MORROW: Interim, yeah. No, he was the
 09 Chair of the --
 10 SENATOR PEACE: -- of the PX board.
 11 SENATOR MORROW: -- of the Technical, what is it?
 12 SENATOR PEACE: Right, the committee, but that
 13 wasn't as a -- I don't think that was as a member. It might
 14 have been, but was definitely on the PX board.
 15 SENATOR MORROW: Definitely. He was the Interim
 16 Chairman.
 17 SENATOR PEACE: Right.
 18 And I don't think there was anybody that served
 19 on both boards.
 20 MR. HELLER: Sorry. I must have had it wrong
 21 then.
 22 CHAIRMAN DUNN: That's all right.
 23 Seeing no further questions, Mr. Heller, thank
 24 you, both of you actually. Thank you very much for your long
 25 patience during our endurance test today that's almost over. We
 26 appreciate it very much.
 27 As you can tell, having been listening to
 0392 virtually all of the testimony today, we're going to end today

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02 with a lot more questions than answers, and we may need some
03 follow-up from Edison as well.
04 We appreciated being the only recipient of some
05 of these marketing efforts to willingly come today. The others
06 have been less than willing. Well get them, but we do
07 appreciate the fact that you came forward on such short notice.
08 Eric, thank you as well, too. I suspect there'll
09 be follow-up.
10 We've got one more to go, I think.
11 Thank you, by the way. You guys are free to go.
12 Eric, are you ready?
13 DR. WOYCHIK: Thank you.
14 CHAIRMAN DUNN: This is it, everybody, in our
15 endurance test.
16 MR. DRIVON: Mr. Heller, let me apologize for my
17 expression of frustration.
18 MR. HELLER: Thank you.
19 CHAIRMAN DUNN: Chris, can you take that down so
20 we can start with Eric? Just step down if you need to continue
21 to discuss with Lewis.
22 Eric, thank you.
23 Stephanie, if you'll do your job, and then you
24 are free to go, Stephanie.
25 [Thereupon the witness,
26 ERIC WOYCHIK, swore to tell
27 the truth, the whole truth,
28 and nothing but the truth.]
0393 CHAIRMAN DUNN: Dr. Woychik, thank you very much
01 also for your tremendous patience today as we've gone probably
02 far longer than in the past what we would have estimated than
03 any other committee hearing we've ever had. So, we appreciate
04 it very much.
05 I know that you have had involvement in this
06 entire process of the energy market here in California for many
07 years. And in fact, you have some knowledge about, as I
08 understand it, Perot Systems and some of their efforts here in
09 California. You've had an opportunity, I think, to see some of
10 the documents. You've certainly heard all the testimony today.
11 What I'd like to ask, Dr. Woychik, is if you
12 could share with the committee your views as far as Perot
13 Systems is concerned and the California energy market, and
14 subsequent crisis.
15 MR. WOYCHIK: Well, I have two options to offer
16 you, gentlemen and Senator Bowen.
17 One is a short, four-hour presentation.
18 [Laughter.]
19 MR. WOYCHIK: And the other is --
20 CHAIRMAN DUNN: We'll opt for the long one.
21 MR. WOYCHIK: Well, I have a set of comments that
22 we wrote when we were trying to get FERC to present the right
23 market structure. It's California's Frankenstein of a market
24 model. It's just 128 pages, so I'll be quick.
25 CHAIRMAN DUNN: Okay.
26 MR. WOYCHIK: Actually, I'd like to pass out my
27 suggested idea of a time line for during the period when gaming
0394 was not discussed, but I was advocating that it be discussed.
01 Hopefully, that'll be helpful.
02 CHAIRMAN DUNN: Okay. Chris, right there, he'll
03 take care of it.
04 MR. WOYCHIK: Thank you. Such an open-ended
05 invitation, I would like to ask if you can give me some idea of
06 a timeframe.
07

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08 CHAIRMAN DUNN: As you can tell --
09 MR. WOYCHIK: I want to be considerate, because
10 you've been --
11 CHAIRMAN DUNN: Actually, we also want to be
12 considerate to you. You've given us the entire day, and here we
13 are at -- I don't even want to say the time.
14 So, Dr. Woychik, I would leave that to you. But
15 as you can well imagine, the attention span of the committee
16 members and staff and those in the audience is virtually
17 relatively short. No disrespect intended, Dr. Woychik.
18 And again, we greatly appreciate your patience in
19 being even here at this time of the evening.
20 So, let's hit your key points, but again, as
21 brief as possible would certainly be appreciated.
22 MR. WOYCHIK: Great.
23 Well, beginning in July of 1994, I was actually
24 hired by San Diego Gas and Electric and Southern California
25 Edison right around that time, along with former FERC
26 Commissioner Charles Stalon, to sit in on all of the discussion
27 on the proposed ideas for market structure and summarize that
28 debate. So, we were in on the ground floor, discussing that. I
0395
01 was literally an amanuensis in watching my esteemed colleague,
02 Charles Stalon, who became one of the members of the infamous PX
03 Market Surveillance Committee, and, I think, was involved in the
04 report that Senator Peace discussed.
05 If he was not involved in that report, he was
06 involved in other reports, and always had tremendous insight
07 into the markets.
08 In 1995, we have the WEPEX starting. And in
09 November of '95, I state that this is a Faustian bargain; if
10 implemented, will create incurable inequalities and
11 inefficiencies, et cetera, et cetera. In essence, starting the
12 discussion about gaming.
13 To try to be quick about this, I start discussing
14 with Paul Gribik sometime in December of '95, January of '96,
15 the problems with the games. And he is one of the persons that
16 I can talk to. I'm studying everything I can about games. I
17 have one reference point, the UK. I have one tremendous contact
18 in a person who ran an entire floor of people for National Power
19 that would game the next-day market. A person that I won't
20 refer to his name right now, but even having the opportunity of
21 taking a set of experts from the U.S. over there to meet with
22 him as we proceeded to spend six weeks in Russia, explaining
23 markets to them.
24 Maybe we should have brought something back, I'm
25 not sure.
26 So, then what happens is, I'm -- some personal
27 feelings here -- feeling that I'm absolutely damned for
28 discussing the term gaming. I try to explain that it's market
0396
01 manipulation. That gaming in the traditional sense in the most
02 positive of Nash equilibrium, John Nash equilibrium, occurs when
03 markets are workably competitive. And if you don't set up the
04 rules right, you absolutely have market manipulation and
05 exploitation of the problems.
06 Going -- so, there's seven filings on gaming
07 between about December of '96 and August of '96, which I'm
08 involved in every one of them, writing them all for the most
09 part for TURN and UCAN. And those variously go to either the
10 PUC or to FERC.
11 And we keep saying the same thing: This is a
12 muddy market; there's going to be second bites of the apple; the
13 gaming opportunities are going to be huge.

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14 And then in August of '96, I'm told to tone down
15 the rhetoric, and that I should not use the term "gaming." I'm
16 admonished to change --
17 CHAIRMAN DUNN: This is your last bullet point?
18 MR. WOYCHIK: That's right, the last bullet
19 point on Page 2 -- excuse me, Page 1.
20 And I'm told to not use the terms.
21 SENATOR PEACE: By whom?
22 DR. WOYCHIK: Um, Vikram Budhraj a, other people
23 that are part of the WEPEX.
24 By the way, I'm kicked off the WEPEX. I'm not
25 allowed to join, even though I was originally delegated by the
26 consumers to be on the WEPEX.
27 So, I'm non compos mentis. I'm the one that
28 discusses all these problems. And I'm the one that says that
0397
01 it's the market structure that will create these problems. And
02 this market structure will absolutely create these problems.
03 There's some other well-noted experts that are
04 saying the same thing, only not using the term "gaming."
05 Notably, Bill Hogan and the like.
06 I'm also studying, and even two or three years
07 before this, I worked in Norway with a market that is extremely
08 successful. It expands to Sweden, Denmark, Finland, and then
09 interconnects with Russia, Germany, and it becomes the most
10 successful workably competitive market in the world.
11 SENATOR PEACE: Why did, in your view, because
12 basically Enron and PG&E kind of, you know, what didn't they
13 like about --
14 MR. WOYCHIK: What didn't who like?
15 SENATOR PEACE: Why did, why in that WEPEX
16 process, in '94 -- I'm going through your outline here and stuff
17 -- what you describe as the Enron-PG&E model, which kind of
18 kicks this thing off.
19 If there was this experience in Norway, it's
20 spread and had success, what in your view led these players to
21 promote a different market structure?
22 MR. WOYCHIK: I have a very strong view of that,
23 and it's pretty succinct.
24 In the MOU process, the key parties are: Edison,
25 Vikram Budhraj a, Keith McRae, CMA, Barbara Barkovitch, CLECA and
26 Jan Smutney-Jones, IEP.
27 Keith McRae says to me, "With this market
28 structure, we will get a deal better than the market. And guess
0398
01 what? You're not small consumers."
02 SENATOR PEACE: Keith McRae is representing --
03 MR. WOYCHIK: CMA, California Manufacturers
04 Association, that's right.
05 And Vikram basically says to me, pulls me aside,
06 has dinner with me. Says, "Raise your political constituency,
07 Eric. You don't have one. I'm creating one. We will dominate
08 this process. Period." In no uncertain terms.
09 And he creates this coalition, which is the MOU
10 parties. PG&E joins, Ag joins, everybody that's important join.
11 The outsiders are San Diego Gas and Electric, as you know,
12 California Energy Commission, John Chanley, and myself. Bill
13 Hogan not invited back to California for a couple of years.
14 We say, and it's synthesized to this, I think, if
15 you have sequential markets that allow for a lot of iteration,
16 it's the classic problem for gaming that creates advantage and
17 allows for manipulation. You leave all the windows open. And
18 you leave the doors locked, and you tell the burglars when
19 you're coming and going. And leave a lot of things available

20 for them to take home.
 21 So, sequential iterative market, the California
 22 market, is exactly that market. Nobody else among the experts
 23 who really understand markets, would allow for such a market.
 24 It's agreed to under this stipulation of the MOU, in essence.
 25 And as, Senator Peace, you, I think, correctly
 26 explained, there's not much that changes between the initial
 27 WEPEX proposal and the final proposal that's given to FERC and
 28 approved, except for basically the two market surveillance
 0399 teams, which FERC says are necessary.
 01 And so, I'm screaming into the microphones to
 02 every other place. In short, we come to David Freeman. Let's
 03 step back. We come to David Freeman being appointed as the
 04 trustee in the fourth quarter of '96 about --
 05 CHAIRMAN DUNN: Second bullet point.
 06 MR. WOYCHIK: Second bullet point, right. Is
 07 this pace okay? I'm trying to go quickly.
 08 I think importantly, a probably very little known
 09 fact, is that Mike Florio was put in place of me because David
 10 Freeman called him and basically convinced him to be on the TAC,
 11 the Technical Advisory Committee, so that I would not be there.
 12 Mike Florio doesn't realize this agrees --
 13 realize that consumers have now substituted somebody who doesn't
 14 know anything about markets for somebody who was screaming and
 15 yelling, "Gaming will kill you."
 16 And Florio understands that, gets mad, goes back
 17 to Freeman. And I say, the one thing we need is a real review
 18 of gaming possibilities, and we need some resources. Florio
 19 says, okay; goes to Freeman. Freeman originally agrees.
 20 This is a very exciting, from my view,
 21 opportunity to explain to the TAC and to Freeman, to report to
 22 him on the problems that we'll have with this market structure.
 23 We have Robert Wilson. We have London Economics. We have Harry
 24 Singh. We've got -- we want Paul Gribik on that committee.
 25 Paul Gribik knows the games. We think he can help us.
 26 I, obviously, want to be on the committee, and we
 27 have two or three meetings. The -- they realize we're coming up
 0400 with real things, the market structure would change
 01 dramatically. The political forces get back in gear. The whole
 02 thing's shut down.
 03 So, Freeman knows about gaming. He says, "Don't
 04 call it gaming." Admonishes me, and others, this is about
 05 fixing the market structure, making it more efficient.
 06 In September of '97 -- excuse me, June of '97, we
 07 file this 128-page document that explains all of the market
 08 structure problems that we can see in detail. And we say, this
 09 is a Frankenstein of a market model; it will be a disaster for
 10 California.
 11 TURN has a press conference. Hits the press one
 12 day. We think all we can do is turn up the volume.
 13 We go to FERC. I'm always invited back to FERC.
 14 FERC staff like me. They listen to me, but nothing really
 15 happens. I get to be in front of Betsy Moler, everybody else.
 16 It's all nice, but it's just talk because there's no real
 17 result.
 18 We file California in Blunderland --
 19 SENATOR PEACE: Is it your perception that your
 20 inability to penetrate that is basically just sort of an
 21 underlying philosophical difference, as opposed to, you know,
 22 some sort of untoward, you know, relationship with business?
 23 Is it that they're sold on a philosophy, or that
 24 they were doing the bidding of particular players?

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26 MR. WOYCHIK: You're talking about FERC?
27 SENATOR PEACE: FERC.
28 MR. WOYCHIK: Um, California was very strong in
0401 lobbying FERC. I mean, I have even at WEPEX stage, I have still
01 the records of who went back, who lobbied, who discussed, and
02 how the discussion went. And continued to see reports like
03 that.
04
05 I view it as, and as FERC staff reported to me,
06 ongoing, right up through after the ISO is formed, but certainly
07 from WEPEX until then, no matter what we ask you to do, no
08 matter what we think is important as FERC, California won't do
09 anything anyway; they just won't respond.
10 And the importance of that is really clarified
11 when the first major FERC decision comes down and says, we
12 conditionally authorize the ISO and the PX. However, here's a
13 number of conditions. And they cite TURN and UCAN, others,
14 usually us, because we're the ones saying, what about this; what
15 about that; what about this. And they say, sometimes your
16 conditions don't seem right; your concerns don't seem right, but
17 we want you to report to us on these things, on the congestion
18 iteration window, on the market separation constraints, on the
19 impacts of congestion if there was a single optimization versus
20 the sequence.
21 Duh. We now see those were all the sources of
22 gaming.
23 FERC asked for all those things in that decision.
24 The ISO complies with not a single one of them. ISO does not
25 comply. FERC is, pardon me, unhappy. They think that
26 California's recalcitrant; do not want to even engage -- tell
27 the ISO, once it started up, "We're tired of dealing with you.
28 We'll respond with your filings and all your proposed changes
0402 when we want to."
01 And in short, they really burned their bridges,
02 and they saw only a huge political influence coming at them.
03 SENATOR PEACE: Which was, at its root, what
04 began as the Enron-PG&E access, then when Edison jumped over the
05 wall, so to speak, forming the MOU group, then you had this, you
06 know, effort to have a single voice, which had rooted around the
07 Enron-PG&E model.
08 MR. WOYCHIK: Yes. And now all the generators
09 like this.
10 And then I view as very problematic the fact
11 that, in essence, my interpretation of the Perot information is
12 that they heightened the understanding that gaming was a very
13 high potential profit area. And they provided a tremendous
14 impetus to that to try to connect that.
15 I completely agree with Edison's view, and I know
16 of other views which were that Gribik and company were extremely
17 knowledgeable about explaining the games and knowing the
18 internal mechanics like no one else, in a static sense. And I
19 want to distinguish, because when you get down to actually the
20 games, you need a trader there who's learning, on a vertical
21 learning curve, minute-by-minute, hour-by-hour, you need a
22 trading team. And that team will suddenly outstrip Gribik's
23 knowledge in weeks.
24 So, Gribik takes them to the water. They say,
25 "How do you swim? How do you navigate? Wow, there's rapids."
26 And Gribik, "I know there's some big rocks here, and there's
27 some really deep pools here, and there's some falls over there."
0403
01 And then pretty soon, these guys say, "Wait a
02 minute. You haven't even jumped in. You don't even know. You

03 never touched the water. "

04 And these guys have to jump in and do the
05 sink-or-swim experimentation, suck a lot of water, until they
06 get it.

07 CHAIRMAN DUNN: I want to restate that, but
08 different terms, and see if I'm understanding what you just
09 said, Dr. Woychik.

10 That is, on this issue that we debated heavily
11 this morning, and throughout most of the afternoon, about
12 whether in fact Perot Systems was utilizing any inside
13 information in its marketing efforts to the market participants,
14 which, of course, Mr. Perot and the other representatives denied
15 vehemently, despite our belief that a reading of the documents
16 suggests they were holding themselves out as something
17 different. That is, in possession of unique knowledge.

18 That in fact it's your belief they had inside
19 information or unique knowledge that no one else had. Others
20 could gain it, but it was going to take them a matter of weeks
21 or months of experimentation to get to the point that Mr. Gribik
22 and others for Perot Systems were at because they were inside,
23 day in and day out.

24 Is that an accurate description?

25 MR. WOYCHIK: Absolutely. And I would only try
26 to continue my analogue for a second here.

27 That I'm sitting here in Sacramento, trying to
28 figure out how to navigate the Colorado. And here comes

0404
01 somebody with --

02 CHAIRMAN DUNN: Where Mr. Backus is.

03 MR. WOYCHIK: Right. Here comes -- and then
04 Mr. Perot and Mr. Backus come forward with, "Here's the maps.
05 Here's the terrain. Here's the water flow. Here's the big
06 rocks. And here's your plane fare or your plane ticket. This
07 is how you get there, this is how you can schedule it, and you
08 want to go in this season."

09 Well, sitting here in Sacramento, I would have to
10 do one heck of a lot of research to figure out all those things.
11 And if I have a guide, or a set of guides, who then even give me
12 a rudimentary ability to model it, then I know then what to
13 model.

14 So two things. The CIGMOD model is -- pardon me
15 -- it's crap. But the real dynamic model -- no, it isn't good.
16 I mean, how could it be? \$50,000.

17 But I know because I used to work for Southern
18 Company. I saw them set up a whole floor in 1974, a whole
19 floor, and then they stole Enron's best gas traders and they put
20 them on the floor. And this is an entire floor.

21 I saw National Power with an entire floor of
22 computer jocks, basically, and jockettes, just to game the
23 market the next day.

24 And once you see that a simple computer model,
25 you can't do it with that. You have to have a very dynamic
26 interaction with all of the various models. And iterating, it's
27 obvious. Pardon me, I think it's obvious.

28 SENATOR PEACE: Let me ask a question.

0405
01 To what do you attribute, since you had this
02 situation where, once the gaming actually had -- we know the
03 gaming was going on from the moment the market opened to
04 whatever extent they could get away with it. But then we hit
05 the summer of 2000, and you have the real consequence with
06 respect to it occurring. And you know you have this inside FERC
07 imbedded group of knowledge. And it couldn't have been a
08 surprise to them.

09 To what do you attribute the fact that at the
10 Commissioner level, you get just, you know, a bunch of blank
11 faces, with the exception of Commissioner Massey, in terms of
12 reaction?

13 MR. WOYCHIK: Well, there's a particular very
14 prominent staff member, who I won't mention, but some of you may
15 know who he is. He complained mightily that he was promised to
16 have a capability to actually understand the games.

17 And another person who, I think, is used by the
18 industry for protection right now, but previously was more
19 wanting to root out --

20 SENATOR PEACE: A person who was a staff person
21 in FERC?

22 MR. WOYCHIK: Steve Stoft, the second person I'm
23 talking about is Steve Stoft, the person who now is protecting
24 the industry, but previously was a FERC staff member, and
25 basically got thrown out, or was so dissatisfied because he
26 couldn't candidly explain the games and the problems. And he
27 was one of the first in California to explain interzonal
28 congestion. So, at least he was trying. He was pushed out.

0406 01 Another staff person is demoted and taken away.
02 Resources promised to understand the games.

03 Frankly, there aren't people there that really do
04 understand the games, I think.

05 SENATOR PEACE: What's your perception of it?
06 Why were those people, the staff members who were trying to act,
07 from where do you think the pressure was coming to move these
08 people out?

09 MR. WOYCHIK: In talking to Charles Stalon,
10 former FERC Commissioner, he said the same thing happened in
11 natural gas. The political forces coming from the U.S. Senate
12 Energy Committee were so fierce that he basically got blown out
13 of the water. And when I asked Charles Stalon, I get to call
14 him up any time I want to, and he's a delightful man, he'll say,
15 it's --

16 SENATOR PEACE: Deja vu all over again.

17 MR. WOYCHIK: -- all over again.

18 SENATOR PEACE: So, you had the United States
19 Congress, in terms of its leadership --

20 MR. WOYCHIK: Congress, the President, and a huge
21 political force of EEI and the like.

22 SENATOR PEACE: EEI being?

23 MR. WOYCHIK: Edison Electric Institute.

24 SENATOR PEACE: Which is the -- not to be
25 confused with Edison the company.

26 MR. WOYCHIK: Right.

27 SENATOR PEACE: It's the group of --

28 MR. WOYCHIK: The association of all utilities

0407 01 and energy producers --

02 SENATOR PEACE: Around the country.

03 MR. WOYCHIK: And even the municipal -- I forgot
04 the -- the Federal Municipal Association level.

05 SENATOR PEACE: In those organization structures,
06 as well as in the makeup of the committee structures in
07 Congress, from what region of the country are these -- what
08 region of the country tends to dominate these organizations
09 during this period? Southerners, right?

10 MR. WOYCHIK: Southern Company is an
11 unbelievable force, period. I mean, they put on the Olympics.
12 Okay, they basically put on the Olympics for the world in the
13 United States.

14 Nobody else can do that. They are the largest

15 generator on the planet, by the way.
16 SENATOR PEACE: And the FERC Commissioners during
17 this period of time, where are they from?
18 MR. WOYCHIK: Well, Mr. Hecker -- and I got to be
19 on a plane with him not very long ago, where we had a nice sort
20 of confession-discussion. Where I'm saying, "Mr. Hecker, why
21 Jim White? Why did you let this happen? We told you it was
22 going to happen."
23 And he says, "Well, I didn't have any political
24 support. I didn't have anything like a Pat Wood does, with the
25 President being, you know, absolutely on my side and defending
26 me at any point. I didn't even meet Bill Clinton. I didn't
27 know who he was." You know, in essence confessing, he didn't
28 say this, "I'm a former FERC staffer."
0408
01 SENATOR PEACE: Three out of five Commissioners
02 were from the south?
03 MR. WOYCHIK: Never being able to get Breathitt
04 to support him.
05 SENATOR PEACE: And Breathitt, her relationship,
06 was she the one whose father is --
07 MR. WOYCHIK: I don't actually know.
08 SENATOR PEACE: She's from Tennessee; right?
09 MR. WOYCHIK: Kentucky.
10 SENATOR PEACE: Kentucky, right. And her
11 father's a big lobbyist for international energy companies,
12 right?
13 MR. WOYCHIK: But I've got to tell you, Senator,
14 that historically, there's no doubt about it, that we had all
15 the game and the ball in our pocket. And that's before we had
16 an opportunity to give FERC the market structure we wanted. And
17 we were, I think, politically outgunned from -- because we had
18 not any vision of what the consequences were of getting it
19 wrong.
20 CHAIRMAN DUNN: May I interrupt for just one
21 second, Senator Peace. I don't want to cut you off, but I want
22 to try to narrow it and get us focused back to completing the
23 testimony.
24 MR. WOYCHIK: By the way, I don't have peach to
25 eat.
26 CHAIRMAN DUNN: I've always told you that's my
27 policy.
28 MR. WOYCHIK: Well, I'm trying to think about
0409
01 more points that be of direct relevance to you, given the late
02 time.
03 I think --
04 SENATOR PEACE: You were on Freeman.
05 MR. WOYCHIK: You want me to continue, okay.
06 Thank you.
07 Well, there's some interesting information that I
08 have found. Here's my brief contact with Mr. Backus.
09 I take my presentations to FERC on "California in
10 Blunderland," and I write a paper. And I find on the Internet
11 quotes by the Pan Energy Chairman, Paul Anderson, saying,
12 "Gas had lots of spreads and
13 cherry picking opportunities,
14 it was a lot of fun."
15 "We can do 888 and kick the
16 bejesus out of anyone going
17 through restructuring for the
18 first time."
19 SENATOR PEACE: And 888 is the FERC Order 888?
20 MR. WOYCHIK: Right. FERC Order 888.

21 [Reading text]
 22 "With trading on the location
 23 and timing for power delivery,
 24 you exponentially complicate the
 25 trading equation."
 26 This is in -- I actually found this in early '97.
 27 So, this gentleman was trying to create a merger with Duke
 28 Energy, and became the COO and President of Duke. And now he's,
 0410 you know, in Australia.
 02 But this was the view of everybody in the gas
 03 industry, that they had already gone through the muddy market
 04 phase, and they could create the same thing in electric. And
 05 there was an explicit strategy to do that.
 06 When I presented this, George Backus basically
 07 took out after me, and we had a fairly fierce but short
 08 confrontation, where he said, "This is just adjustments in the
 09 market." This was in his hometown in Denver. Or, he's actually
 10 from Boulder, I guess. "And this is part of the process of
 11 restructuring. You know, don't worry about it. We're all
 12 learning here. This is okay."
 13 And I found that to be an absolutely almost
 14 unbelievable perspective, that it's okay. And always the
 15 argument was, well, gaming is not going to be a serious problem.
 16 You know, we've got to allow for some inefficiencies here.
 17 We'll adjust.
 18 So, I then published the first and only paper
 19 that I could find in the literature on electric market gaming,
 20 where I explain the UK's problems, the schedule coordinator
 21 concept in California, and say, "This will be a tremendous
 22 problem if we don't make the adjustments that we proposed before
 23 FERC, and we don't get a change to the market structure that's
 24 significant to take away these gaming opportunities."
 25 And I looked high and low for anybody publishing
 26 in the trade press, or anyplace else, about electric market
 27 gaming. The only thing that's available are reports from OFFER,
 28 which is the British regulator, where they had problems.
 0411 There's nothing else available. And I don't find this Backus
 02 report that was published.
 03 So, my conclusion on this is, gaming was not
 04 discussed. Gaming was never part of the lexicon, and knowledge
 05 about gaming strategies was not public at all. There's no way
 06 this information was public.
 07 In essence, my -- I got to talk quite a bit with
 08 Paul Gribik. He did help explain a number of gaming problems.
 09 One of them was the Inc Dec game, in December of '97, before the
 10 ISO starts, I sent a set of comments to FERC, which were part of
 11 the process. And I say, "You've got to close the Inc Dec game.
 12 Everybody knows about it." And Gribik actually gives me the
 13 graphics that are in my filing, which I have.
 14 And I ask him to talk to the ISO, and he does.
 15 And the ISO files a very brief statement that says, Inc Dec game
 16 is a problem. We are going to fix it."
 17 FERC basically says, "Good. ISO said they're
 18 going to fix it. These guys pointed it out, okay."
 19 ISO never, ever, ever fixes Inc Dec game. It's
 20 still a problem. Only in the next three months will Inc Dec
 21 game start to be closed down, and the proposal is in about 9
 22 months, ISO says, according to Mike Florio and the other people
 23 on the board, the Inc Dec game will actually be stopped.
 24 SENATOR BOWEN: Mr. Woychik, why in your opinion
 25 did the Inc Dec game not get stopped earlier?
 26 MR. WOYCHIK: Thank you. By the way, this is a

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27 bit of a catharsis for me, and it's very pleasant to have the
28 chance to explain my thoughts. I appreciate it.

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01 Jeff Tranen, the first CEO of the ISO, seemed to
02 be responsive, seemed to understand games, seemed to want to do
03 a number of things that would help resolve these games.

04 I think he did have a confrontation, exactly,
05 over this issue of the software and Perot. The board was going
06 to fire him. I was starting to be close enough to the board at
07 that time, as I was finally put back on the board after being
08 removed by FERC -- excuse the confrontation, Senator Peace --
09 with the Oversight Committee.

10 But at that point, Tranen was trying to
11 understand these issues, and basically, I think, got thrown out.

12 So, Tranen gets thrown out. The Perot software
13 is an issue. Perot is proceeding to market extensively, and
14 nobody knows anything about it.

15 I get to get international groups to the ISO.
16 I'm on the board. They allow me to, you know, every once in a
17 while there's groups from the Ukraine, Kazakhstan. We had these
18 -- Terry says, oh, yeah, I'll give you a little time. Spends
19 half an hour with the head of the Parliament of Ukraine, the
20 head of the regulatory commission, two CEOs, and the Deputy
21 Prime Minister of Ukraine. Very fun group.

22 And so, Terry thinks he has an obligation, says,
23 "Well, you know, the most important thing is for me to respond
24 to my constituency, and my constituency is generators."

25 And I'm sitting there going, Wait a minute,
26 Terry. How come you never say this to us board members, right?

27 In essence, he goes through a series of
28 discussions like that, which really -- and he in essence

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01 confesses almost, from my view, anyway, my interpretation, that
02 if I don't maintain this constituency, my generators will walk,
03 and I'm dead. I need reliability. I need to create positive
04 relationships. I need to create a positive investment climate,
05 and this is my constituency.

06 I'm studying the ISO the whole time, and I
07 realize that the customer interface with the generators is the
08 most important part of the ISO from Terry's view, and it's
09 nothing that anybody on the board ever watches. Has a big
10 budget. There's two or three client representatives for the ISO
11 that work with every schedule coordinator.

12 Then I'm on the floor with these Ukrainians, and I
13 hear one of my colleagues that I know from PG&E calling one of
14 the floor guys, who I'd already taken to Kazakhstan ISO,
15 explaining -- and he's explaining to her how to game the market
16 so that they can maximize the benefits of PG&E hydro, maximize
17 the value of that, and get the most out of their hydro. And I'm
18 actually -- it's going on for such a long time.

19 And because I know both of them, one of them is
20 over to my house for dinner, you know. The other one, I'm
21 around the ISO all the time, so I just ask him, "You have direct
22 conversations with market participants on how to game the market
23 through the ISO."

24 So, you have a culture at the ISO that is so
25 pro-supplier, so pro-schedule coordinator. And there's
26 confusion in the roles. The schedule coordinator is buying for
27 the customer and generating. And if they're only generating,
28 they're still in the same status as though they're buying for

0414

01 the customer.

02 So, no other model in the world has a schedule
03 coordinator that combines these functions. And I looked back at

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04 my Public Utilities fortnightly article of December '98, and I
05 go, holy cow, that was exactly right. This is a huge problem.
06 It's the design of the schedule coordinator and
07 the huge number of loopholes and iterations.
08 SENATOR BOWEN: Can you give me the short answer
09 to why the Inc Dec game didn't get fixed?
10 MR. WOYCHIK: Pure political pressure.
11 SENATOR PEACE: I can tell you.
12 Jeff, you're right. Not just the Perot thing,
13 but a bunch of things that are happening at that time led to a
14 confrontation between Tranen and the ISO board, which at that
15 point was generator-dominated and controlled because the large
16 consumers had gone to bed. And tragically, a couple or at least
17 one of the small consumer representatives on the board also
18 tended to accidentally vote with the large consumers because
19 they were anti-utility. And they were so myopic, you know, they
20 got manipulated. They got used.
21 And so, there was this confrontation. Tranen was
22 a great, great choice. Excellent, you know, quality of human
23 being. All of the things you'd want, and a smart guy.
24 And I don't know how many other things occurred,
25 but I know the Perot confrontation kind of, I think, on two
26 levels had him sort of seeing the writing on the wall, and he
27 ended up with a confrontation with the board, he had to leave.
28 Eric's experience with respect to -- I mean, I
0415 come back to an oversight board a month later, and I find that
02 this little coup has occurred with his appointment, which we
03 ultimately were able to push back with, and such.
04 But you had a situation where we were totally
05 dependent on FERC, because we were stuck with a stakeholder
06 board. And whether you change the scheduling coordinator rules
07 or the other rules, none of it matters unless you get a
08 Governor's change, which is where I'd like to ask you a
09 question.
10 We only have four weeks left in session. And we
11 still have a stakeholder, and we have, apparently, some sort of,
12 you know, unknown detente over our current ISO structure.
13 I'm very worried about that, and I'm very worried
14 about what FERC might do with respect to the structure that we
15 currently have. They've already published it's unacceptable to
16 them.
17 One of the options -- I'm just going to say what
18 my instinct is, and let you comment on whether I'm full of
19 bologna or not -- it seems to me that the safest way to get as
20 much independence from the national predisposition on this, and
21 give us as much opportunity to determine our own future, is to
22 pull the ISO functions out of the nonprofit entity altogether
23 and put it inside the Power Exchange -- I mean the Power
24 Authority, so that it's a public entity, where FERC's
25 jurisdiction is less clear.
26 I'm curious as to what your -- you don't have to
27 comment.
28 MR. WOYCHIK: No, no. I'm working in Alberta.
0416 SENATOR BOWEN: You don't have to respond
01 publicly right now, if you want to think about it. But I think
02 I'd like to echo the question.
03 MR. WOYCHIK: Okay.
04 Well, I'd like to offer a preliminary response.
05 I think you have to consolidate the authority in
06 an ISO-like structure. If you diffuse it with other functions,
07 you're asking for problems.
08 So, whether it be public, or stakeholder, or
09

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10 private, or public benefit corporation as it is now -- and we're
11 in a big dialogue over this in Alberta, where their market has
12 been really problematic as well, although, not as dramatically
13 so.

14 I so happens that their vendor is ABB. That they
15 happen to be using Perot, or they did. And economic withholding
16 and fiscal withholding look very much like California, and they
17 have a pool.

18 So, I actually told them all this. And they're
19 trying to -- they're going to consolidate and use an ISO, not a
20 separate ISO and PX.

21 Getting away from state regulation -- excuse me,
22 federal regulation, again, if you can -- it seems to me if the
23 Legislature had the capability, in essence, the political power
24 to put forward a proper market structure, and I would say you
25 should just -- and nobody likes to hear this, particularly when
26 we're so worried about Texas, and saying that our name is
27 anything but California -- but if we could just adopt a
28 structure that works. Call it whatever you want to call it.

0417

01 SENATOR PEACE [whispering]: PJM, New York or New
02 England.

03 MR. WOYCHIK: Doesn't matter. Those three are
04 all the same. Those three all work pretty good in that order.
05 The PJM structure works pretty good. The New York structure
06 works very good.

07 Buy the software. Change the governance of the
08 ISO. And I'd be very worried about putting it into a public
09 function such as the --

10 SENATOR PEACE: Part of the problem we have,
11 though, is with SMUD now having, you know, pulled out; LA, you
12 know, never having gotten in; the whole concept of an integrated
13 ISO doesn't work very well when you have the publics not
14 integrated into the system. I don't know any way to get them
15 back in without --

16 MR. WOYCHIK: That's absolutely valid and really
17 critical problem.

18 One of the problems is, we've given them the
19 opportunity to do an extensive amount of gaming and make huge
20 profits. Witness Perot's relationship with LADWP, which
21 suddenly escalates, and the fact that David Freeman signed the
22 contracts for Perot. Perot goes to LADWP. Freeman goes to
23 LADWP, and then there's massive gaming. And they have so much
24 money that they can pay off all their bills and fix all their
25 equipment.

26 SENATOR PEACE: Right.

27 MR. WOYCHIK: I don't know what to do about that,
28 but we're --

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01 CHAIRMAN DUNN: I was simply going to say, before
02 we have a mutiny by staff --

03 MR. WOYCHIK: Okay. Can I just offer -- I'm
04 sorry.

05 CHAIRMAN DUNN: No, go ahead, please.

06 MR. WOYCHIK: I wanted to just sort of get back
07 to the discussion with Gribik.

08 So, Gribik helps me. I actually have him over to
09 my house. We talk games. We agree on a lot of points.

10 I'm in -- I expect that Gribik's going to come
11 over to my house next, and we're going to have another
12 discussion when I don't see him at the ISO, or I'm going to go
13 to his house. He lives in Danville. Invites me over.

14 E-mail, phone communications suddenly don't work.
15 The word gets out that, in essence, he helped me with our

16 filing, TURN/UCAN, at FERC.
 17 I finally get ahold of Gribik, and my timing
 18 here, I can't identify the time, but it's sometime after the New
 19 Year in February through April of '98. And he's -- I get ahold
 20 of him by cell phone. He's agitated. He's downright unhappy.
 21 He says, "My whole role's changed. I'm sorry I
 22 haven't gotten back to you. I'm doing different work now. I'm
 23 off marketing."
 24 And then, because this is -- I have to basically
 25 everything I know, I'm under oath, I have to reveal a
 26 confidential communication, and I feel personally bad about
 27 this, just to be straight.
 28 He says, "Please keep this in confidence. I'm
 0419 out marketing and selling opportunities to deal with getting
 01 around and through the loopholes and games. And I'm in Houston
 02 right now. And basically, my role has changed, and I'm not
 03 supposed be interfacing with you very much."
 04 CHAIRMAN DUNN: Time period for this conversation?
 05 MR. WOYCHIK: It's sometime in '98, because we
 06 had made the filing in '97, December of '97. And it was
 07 subsequent to that, but I don't know exactly when it is. It
 08 could have been April, because there was some long time there.
 09 And all the time I'm talking with my colleague,
 10 Mike Florio, and Florio's -- you know, I'm saying, "Mike, I want
 11 to get together with Gribik more."
 12 He says, "Absolutely do it. That's wonderful.
 13 You know, obviously you guys worked well together."
 14 So then, when I see all the e-mail, I suddenly
 15 have a very different vision, and feel almost that I was being
 16 tested for my information level on games.
 17 But I've never seen anybody that could see the
 18 games like Gribik, and I've talked to everybody I could.
 19 There is one other person, by the way, I saw in
 20 the discussion and e-mail, Farouk Rahimi, who understands the
 21 games remarkably, and I really do like Farouk Rahimi. I hope he
 22 knows this if he hears that I've discussed him in this -- in
 23 this setting.
 24 He works for the ISO's Market -- excuse me,
 25 Department of Market Analysis for Angeli Sheffrin. He knows.
 26 He knew what the games were almost as well as Gribik before he
 27 was employed by the ISO, and he's been there as a consultant for
 0420 Angeli Sheffrin. I know, because I could always go to him and
 01 test him in the same way, and talk to him at the same, for me,
 02 anyway, extremely high level of abstraction about algorithms,
 03 games, loops, and why they work?
 04 And, well, you have a tremendous resource right
 05 in Angeli Sheffrin's shop.
 06 CHAIRMAN DUNN: Senator Bowen.
 07 SENATOR BOWEN: Mr. Woychik, let me ask your
 08 impressions of some of what we heard today.
 09 In reading the documents, and the e-mails, and
 10 various things in preparation for this, I was expecting
 11 Mr. Gribik to be one of the sharpest tools that's ever come
 12 before this committee.
 13 Somehow, that's not the impression I was left
 14 with. Is the Paul Gribik whom you worked with on gaming the
 15 person you saw testify before this committee today?
 16 MR. WOYCHIK: Yeah. Very honestly, Senator
 17 Bowen, his adrenaline level was at a level I've never seen
 18 before. His tone of voice, if I were to hear him on the phone
 19 on a phone call, I would never think it was him.
 20 I've never seen him be as worried, frankly. I
 21

22 think he was worried.
 23 SENATOR BOWEN: So, that would not be typical of
 24 the way your interactions with him --
 25 MR. WOYCHIK: Extremely calm, quiet. He's --
 26 he's a shy technical person. He doesn't raise his voice ever.
 27 SENATOR PEACE: He seemed not to know much.
 28 MR. WOYCHIK: No, he knows -- he knows a lot. He
 0421 really does. He knows everything about games.
 02 SENATOR PEACE: So you --
 03 MR. WOYCHIK: I thought he was nonresponsive. I
 04 mean, I would, in a legal setting, I think he'd be declared
 05 nonresponsive.
 06 SENATOR BOWEN: I got the sense he was afraid to
 07 answer any question in a straightforward manner.
 08 Did you get that sense?
 09 MR. WOYCHIK: Yes, I did, because some of the
 10 questions, the very straightforward questions about congestion
 11 that were asked --
 12 SENATOR PEACE: He knows better than to give the
 13 answers he gave.
 14 MR. WOYCHIK: He knows those answers better than
 15 anybody in this room.
 16 CHAIRMAN DUNN: All right.
 17 Senator Morrow, Senator Peace, Senator Bowen, any
 18 follow-up? Senator Morrow.
 19 SENATOR MORROW: Kind of recovering.
 20 Mr. Woychik, I appreciate your testimony here
 21 today in shedding light. The first time members of this
 22 committee have had a chance to speak with Mr. Gribik.
 23 Just a couple points you brought up. I think
 24 you'd indicated that Mr. Budhraj, Vikram, at some point had
 25 indicated to you, consistent with Mr. Gribik and others, to tone
 26 it down, and all of a sudden, you have a new definition of
 27 "gaming" or something? When did that occur?
 28 MR. WOYCHIK: The term "gaming" was used almost
 0422 exclusively by myself in all of the market participant meetings,
 02 and there were at least two and sometimes three or four a month.
 03 No one else would use the term gaming, literally no one.
 04 SENATOR PEACE: When is this? What's the time
 05 period?
 06 MR. WOYCHIK: On the timeframe here, February of
 07 1998, the ISO Executive Committee has a conference call to
 08 address a staff memo, "Congestion Management Gaming and PX Zonal
 09 Pricing Problem," the first time that they would discuss gaming.
 10 Okay? So that's February of '98.
 11 But it's a term that -- and further more, you
 12 know, a lot of the discussions, that we would come upon the same
 13 thing that Ross Perot said: Oh, what's gaming? You know, it's
 14 A Beautiful Mind, Nash equilibrium. Everything's a game.
 15 SENATOR MORROW: At some point earlier, it sounds
 16 like -- look, my view as a layman -- when I think of the term
 17 "gaming" in this context, I think of manipulation of the system
 18 or market with the intent to maximize profits, or exercise
 19 market power, whatever you want to call it. It's something
 20 along those lines.
 21 I mean, was that pretty much the prevailing view
 22 at some point, until it changed among those in the energy
 23 market?
 24 MR. WOYCHIK: I would say it was almost that
 25 gaming was used in a nonpejorative way, except for people like
 26 myself, who kept hammering on saying, "No, I mean manipulative
 27 gaming, market manipulation. That's gaming."

28 And I would have to literally redefine it almost
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01 every time I used it.
02 And so, only now has it come to be understood
03 that when you're talking about gaming, you mean the bad kind.
04 And you have to literally redefine it, because gaming is fine
05 except where there's manipulation, and then you have to say that
06 it's manipulative gaming.
07 So, I would say, Senator Morrow, that even now,
08 you want to try to be specific and not just use the term gaming.
09 In other words, be pejorative about it, because you're concerned
10 about the pejorative form of gaming.
11 SENATOR MORROW: Okay.
12 Tell me why, if you can? Apparently there was a
13 change with Mr. Budhraj as well, too. Why? Can you fathom why
14 the change of heart, if you will?
15 MR. WOYCHIK: I'm sorry?
16 SENATOR MORROW: With regard to Vikram I mean,
17 apparently there was a change of heart. He told you to tone it
18 down in terms of gaming. Can you fathom why he would say such a
19 thing?
20 SENATOR PEACE: And in that timeframe there,
21 communication with Vikram is back before. It's like '94, '95.
22 '95 probably.
23 MR. WOYCHIK: '95, '96, yeah.
24 SENATOR MORROW: You've known him for a long
25 time.
26 MR. WOYCHIK: I've known him -- I've known Vikram
27 since 1985, when, as a Commissioner advisor, I invited him to
28 speak to the entire Public Utilities Commission in a series of
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01 sessions. He was the Manager of Planning at Edison. And he was
02 talking about scenarios, and scenario planning for Edison in the
03 least-cost planning sense.
04 And I thought he had a brilliant concept, and I
05 facilitated him being more -- being able to present a number of
06 forums.
07 And subsequently, I actually worked for Edison
08 from 1990 to '93. And so, I was around all of those folks. And
09 I've known John Breison since before -- when he was Chairman of
10 the California Public Utilities Commission, and his advisor was
11 a good friend of mine.
12 So, Edison and Vikram, I've known them forever.
13 SENATOR MORROW: With regard to Vikram, as I
14 understand it, he's had a very major role in designing the
15 market system in California.
16 And so, I'm taken aback when I hear that -- let's
17 put it this way, if somebody's attacking the system you create,
18 by my way of thinking, why would he tell you to tone it down?
19 MR. WOYCHIK: He didn't want gaming to be
20 discussed.
21 SENATOR MORROW: Why? Can you fathom why?
22 MR. WOYCHIK: He thought that the market was
23 going to work fine as it was. And that the people that should
24 have advantage would get advantage, in essence.
25 And there's a couple of other things, just to be
26 -- I'm sorry. I was going to go to another point.
27 SENATOR MORROW: No, go to that point. We're all
28 ears.
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01 MR. WOYCHIK: Well, to be fair, Vikram was very
02 argumentative in the WEPEX process about certain things.
03 SENATOR PEACE: Seems to me he was argumentative
04 about everything.

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05 MR. WOYCHIK: Well, these were points that he was
06 right about, that I caved on, and other people did, in essence.
07 And he didn't get his way. I mean, when he's argumentative and
08 he doesn't get his way, Vikram, it's an unusual circumstance.

09 And so, he actually lost on a few things, and he
10 was right, but wanted the political coalition to -- and thought
11 that was more important.

12 So, from my understanding of Vikram is, the
13 political coalition and the long-term strategy that will work
14 for it, the coalition, is more important than whether the
15 details are totally worked out.

16 SENATOR MORROW: One other question. It appears
17 you've had similar conversations with Mr. Freeman, David
18 Freeman, in terms of toning it down, or don't use the gaming as
19 you had in the past.

20 Yet, I see other quotes by him, you know, talking
21 about the pirates, and the gougers, and the generators. That's
22 stronger terms than gaming.

23 I don't understand that. Explain that to me, if
24 you can.

25 MR. WOYCHIK: Well, I don't know that I can
26 explain it as he would think of it exactly, except that one of
27 the -- Margie, from LADWP -- excuse me, Marcie, thank you.
28 Marcie Edwards worked for David. Marcie Edwards was given the

0426 job of buying and selling power for LADWP.

01 There's no doubt about it that she knew, and
02 helped manage a group of people that gamed the market
03 extensively, from my view. She got in competitions with David.
04 Basically was kicked off the ISO board so he could be on the ISO
05 board, and then left and went to Riverside.

06 But the real important information, I think, for
07 you is that David Freeman was administering a group of people
08 who became very sophisticated at gaming the market, from my
09 view. And he never wanted anyone to discuss the term gaming.

10 SENATOR MORROW: You're talking about LADWP at
11 this point?

12 MR. WOYCHIK: Correct.

13 SENATOR PEACE: Freeman, yeah.

14 MR. WOYCHIK: Freeman at LADWP, right.

15 SENATOR MORROW: I just wanted to make sure.

16 MR. WOYCHIK: As the head of LADWP.

17 SENATOR PEACE: Can I add to that answer in terms
18 of explaining it?

19 You have to put it in the political context. You
20 had -- remember, Edison and SDG&E are the holdouts and against
21 restructuring. All right?

22 PG&E books with Enron and says they're going to
23 open that market by itself.

24 Tremendous pressure coming from Washington and
25 from -- forgive the expression -- five Republican members of the
26 PUC, and a Governor who decides this is a number one top agenda.

27 Edison makes a political decision they're going

0427 to lose. And they decide to go over and go to PG&E. They
01 announce it, because they'd seen -- and what had happened is,
02 Enron and CMA, California Manufacturers Association, they went
03 to PG&E and they said, "If you don't get on board, we're going
04 to make a filing at the PUC to re-open your Diablo Canyon
05 settlement."

06 And at the time, 90 percent of PG&E's profits
07 were associated with the Diablo Canyon.

08 MR. WOYCHIK: PG&E was also a sophisticated gas
09 trader with PGT, knew how to move the market with bilaterals,
10

11 and wanted to play that.

12 SENATOR PEACE: And they had hydro. And they
13 knew they had hydro.

14 MR. WOYCHIK: Yeah.

15 SENATOR PEACE: So, Edison now is beginning to
16 feel surrounded. And they're afraid that PG&E and Enron
17 together, along with the Manufacturers and the big consumers,
18 will do a deal that will squish them. So, they make a political
19 decision to put this MOU -- join with this MOU group, and they
20 give up on PoolCo, which is where they had been in terms of --
21 in other words, not having a separate ISO and PX. And they try
22 to work on the edges.

23 So, the answer to the question why would Vikram
24 then say, "Don't make the arguments about market," because
25 simultaneously, they thought they were getting the commitment
26 from Betsy Moler and FERC that if anything goes wrong, they'll
27 step in.

28 You know, logically, no utility in this state
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01 would have subjected themselves to the exposure that they had
02 under those stranded costs element without thinking they could
03 count on FERC to step in.

04 I had these conversations, very direct, with
05 Vikram, with Bob Foster, with other guys. I said, you know, you
06 guys are nuts. Why are you doing it?

07 No, something goes wrong, there's no way FERC --
08 not only did they believe that FERC would step in, they didn't
09 believe FERC would have a choice but to step in. They said,
10 "We're too big. FERC would look terrible. They couldn't allow
11 the things to go that crazy."

12 Little did we know that -- and that's why I keep
13 coming back to this philosophy, this very radical philosophy. I
14 don't believe FERC was back there, you know, I believe the
15 political pressure.

16 MR. WOYCHIK: Betsy Moler also made a lot of
17 strong statements, and she was removed and replaced by
18 somebody --

19 SENATOR PEACE: Right. And happened is, at the
20 Commissioner level, FERC radicalized. From the point at which
21 all these agreements were made, the character of the
22 Commissioners changed. They came -- it was bipartisan,
23 Democrats and Republicans alike, but they were all Southerners,
24 and they were all part of this, you know, we're-going-to-make-a-
25 lot-of-money crowd.

26 SENATOR MORROW: Do you agree with --

27 MR. WOYCHIK: Yeah, I do.

28 SENATOR MORROW: -- Senator Peace's synopsis?
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01 MR. WOYCHIK: Betsy Moler wanted to fix the
02 market. She was delightful, very bright, and was, I think,
03 willing to do exactly what Senator Peace says, which is, we want
04 to make this market work. And invited, for the first time,
05 consumers to come before her, repeatedly, and everyone to
06 present their issues.

07 SENATOR MORROW: With respect to Mr. Freeman,
08 when approximately did he have this conversation with you on
09 this subject about the gaming?

10 MR. WOYCHIK: Um, it was a conversation that was
11 relayed to me directly by Mike Florio, because Freeman and I
12 didn't get along too well. In fact --

13 SENATOR MORROW: So, you're getting this from
14 Mr. Florio?

15 MR. WOYCHIK: Yeah.

16 SENATOR MORROW: When did your conversation with

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17 Mr. Florio take place?
18 MR. WOYCHIK: It's just in the timeline. I'm
19 thinking that it's about January of '97.
20 Right around that time or a little bit later, as
21 the TAC is forming, and there's no change in the market
22 structure, I finally convinced David Freeman to let me make a
23 presentation to the TAC. And I put down 15 "Far Side" cartoons
24 that basically say that David Freeman and this TAC will atomize
25 California's electric market, and it will be a total disaster.
26 So, after that, David was even less willing to
27 talk to me.
28 SENATOR MORROW: Have you got those "Far Side"
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01 cartoons?
02 MR. WOYCHIK: I was looking for them. I actually
03 think I do have some of them.
04 SENATOR MORROW: I'm a collector.
05 CHAIRMAN DUNN: Seeing no more questions --
06 MR. DRIVON: I actually have some.
07 We've got to get back to one point here.
08 You sat and listened to Mr. Perot. This is a
09 hearing about Perot.
10 MR. WOYCHIK: Right.
11 MR. DRIVON: You sat here and listened to
12 Mr. Perot, you listened to him say that Perot Systems was
13 basically an innocent observer of what was going on, as an
14 unprofitable sideline, virtually marketed nothing.
15 I'd like to hear your comments as to how accurate
16 you think that testimony was?
17 MR. WOYCHIK: Thank you.
18 My observations of Paul Gribik are really as
19 follows. That he seemed to have all the best intentions when he
20 was around me, and really wanted to work on fixing the
21 loopholes. And he did. He did a number of things like that.
22 On the other hand, there was then a phase later
23 on where he would present proposals that absolutely violated all
24 the things that we had discussed. And he was working with
25 Kritikson and Fred Mobasher in the PX later, in his sort of
26 later phase. And he would come at a proposal, and he was then
27 pushed into the position of, in essence, marketing a proposal,
28 because that's what they wanted, and trying to put the best face
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01 on it.
02 But it would -- it would have been a disaster for
03 market gaming. I mean, it would have -- and I would say, I
04 would sort of propose that to Paul, and he'd go, "Well, you
05 know, there's some good things about this. This is going to fix
06 a few things here." And I'd keep him talking, keep him talking.
07 And pretty soon, he's right on with me about my observations
08 about how this is going to work, and it really is a problem.
09 But he'd say, "But no. You know, we've got to
10 get some support for this."
11 So, I saw him literally more from sort of
12 initially always wanting to fix the market, trying to bring
13 forward compromise solutions which were deadly, potentially, to
14 then his direct confession to me, "I'm out marketing about
15 gaming, and I don't like it."?
16 CHAIRMAN DUNN: Is it fair to say -- I don't mean
17 to interrupt you, Mr. Woychik -- but what I hear you saying is,
18 in your view, he went from an individual that was motivated to
19 really identify and fix the market, to an individual who's
20 motivated to identify the flaws and market the flaws while he as
21 at Perot?
22 MR. WOYCHIK: Yes. And I would say, because I

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23 think his nature is -- is really to want to not market gaming
24 opportunities. I felt it, and I could sense it again from the
25 tone in his voice, and from the way he spoke, and his -- his
26 less than calm nature that he was pushed very hard by
27 management. That's my perception.

28 I thought I perceived that in his phone

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01 conversations and when I would see him at other points. It's
02 almost like, well, I'm not with you anymore, and I don't -- and
03 I'm not very proud of it.

04 SENATOR MORROW: Pushed by management, he's no
05 longer with Perot.

06 MR. WOYCHIK: Well, when -- there was a period in
07 this about I'd say February to April '98 when he was still with
08 Perot. And he was basically on the road, as you saw from all
09 the presentations to PPL, Dynegy, Edison, PG&E, et cetera, Tokyo
10 Electric.

11 CHAIRMAN DUNN: Seeing no more questions,
12 Mr. Woychik, thank you again. Thank you for your patience.
13 It's been a very long endurance test today. We appreciate that.

14 I do want to extend a thank you to Donna, who is
15 virtually asleep over here now.

16 Stephanie's already left.

17 Evelyn, who's already left with her convenient
18 excuse.

19 The Sergeants who always hate the days that our
20 committee, this committee, meets.

21 To our State Senator from Texas over here.

22 To everybody who has maintained sufficient energy
23 to reach this point, if anybody has not noticed, the room looks
24 a little different now, after 10:00 tonight, than it did at 9:30
25 this morning.

26 Thank you, everyone. We are adjourned.

27 [Thereupon this portion of the
28 Senate Select Committee hearing

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01 was terminated at approximately.
02 10:05 P. M.]

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01 CERTIFICATE OF SHORTHAND REPORTER

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03

I, EVELYN J. MIZAK, a Shorthand Reporter of the State
of California, do hereby certify:

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06

That I am a disinterested person herein; that the
foregoing transcript of the hearing of the Senate Select

07

08

Committee to Investigate Price Manipulation on the Wholesale
Energy Market was reported verbatim in shorthand by me, Evelyn
J. Mizak, and thereafter transcribed into typewriting.

10

11

I further certify that I am not of counsel or
attorney for any of the parties to said hearing, nor in any way
interested in the outcome of said hearing.

12

13

IN WITNESS WHEREOF, I have hereunto set my hand this
_____ day of _____, 2002.

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EVELYN J. MIZAK
Shorthand Reporter

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